

No. 10962

7-4-05

10962

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE RAILROAD CREDIT CORPORATION, a Corporation,
Appellant,

vs.

FREDERICK H. ECKER, FRANK C. WRIGHT and ROBERT E. COULSON, the members of the Reorganization Committee, of the Western Pacific Railroad Co., Debtor,
Appellees.

and

THE WESTERN PACIFIC RAILROAD CORPORATION, a
Corporation,

Appellant,

vs.

THE RAILROAD CREDIT CORPORATION, a Corporation,
Appellee.

Transcript of Record

Upon Appeals from the District Court of the United States
for the Northern District of California,

Southern Division

FILED

APR 2 - 1945

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Attorney for Appellee, Reorganization
Committee of The Western Pacific Rail-
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In the District Court of the United States for
the Northern District of California
Southern Division

No. 26591-S

In Proceedings for the Reorganization of a
Railroad

In the Matter of

THE WESTERN PACIFIC RAILROAD COM-
PANY,

Debtor.

PROOF OF CLAIM AGAINST THE WESTERN
PACIFIC RAILROAD COMPANY, DEBTOR

1) Name, address and business claimant; The Railroad Credit Corporation, 805 Transportation Building, Washington, D. C.

(2) Total amount of claim: \$2,534,942.00 plus interest.

(3) Detailed statement of claim showing nature of claim and each item thereof, and date each item arose: See Exhibit A attached.

(4) Security or lien, if any, held for said claim: See Exhibit A attached.

(5) Copies of original documents to be submitted with claim. (Original promissory notes, contracts, orders, or other written documents, if any, forming the basis of claim should be copied and the copies attached to one copy of proof of claim: See Exhibits A-1, A-2, A-3, and A-4 attached.

(6) Amount, if any, heretofore paid on said claim: See Exhibit A attached. [1*]

(7) Details and amounts of set-offs or counter-claims against said claims: None.

(8) Net amount now due claimant: \$2,534,942.00 plus interest.

(9) Venue, title and number of suit or proceeding, if any, in which said claim is involved: None.

(10) Priority, if any, claimed for payment of the claim or any part thereof, and reasons therefore: Priority is claimed to the extent justified by the attendant facts and figures.

(11) The Western Pacific Railroad Company claim or correspondence file numbers, if any, relating to claim or any item thereof and to set-offs or counterclaims: None.

(12) Name and address of person authorized by claimant to receive and receipt for, on behalf of claimant, all dividends or payments: Mr. Arthur B. Chapin, Treasurer, The Railroad Credit Corporation, 805 Transportation Building, Washington, D. C.

(13) Name and address of attorney authorized to represent claimant in respect of said claim: Mr. Daniel Willard, Jr., Counsel, The Railroad Credit Corporation, 805 Transportation Building, Washington, D. C.

(14) If proof of claim is executed or verified by a person other than (1) claimant, if claimant is an individual, (2) member of firm, if claimant is a

*Page numbering appearing at foot of page of original certified Transcript of Record.

partnership, (3) president, vice president or treasurer, if claimant is a corporation, the reasons therefor and character of the authority of the person so executing or verifying the proof of claim are: None.

Dated at Washington, D. C., September 10, 1935.

THE RAILROAD CREDIT
CORPORATION,

By E. R. WOODSON

Its Vice President. [2]

United States of America,
District of Columbia—ss.

E. R. Woodson, being first duly sworn, on oath deposes and says that he is the Vice President of Claimant herein; that he has been duly authorized to execute, verify and file the foregoing proof of claim; that he has knowledge of the facts therein stated; that the same are true and correct; and that the amount now due claimant from The Western Pacific Railroad Company, Debtor, on claims, after allowing all credits, set-offs and counterclaims, is \$2,534,942.00 plus interest.

E. R. WOODSON

Subscribed and sworn to before me this 10 day of September, 1935.

LOUIS J. LITY GUALD

Notary Public.

My commission expires Jan. 10, 1938. [3]

EXHIBIT A-1

A certified copy of the Marshalling and Distributing Plan, 1931.

W. J. KANE,
Secretary.

Before The
Interstate Commerce Commission

Fifteen Per Cent Case, 1931

Ex Parte No. 103

In the Matter of Increases in Freight Rates
and Charges

CONTRACT

By and Between the Rail Carriers Participating in
the Plan Known as the Marshalling and Distributing Plan, 1931, with each other

and with

The Railroad Credit Corporation [4]

Form No. 1B. (12-16-31)

Assent and Agreement

In consideration of One Dollar and other good and valuable consideration to it in hand paid by each of the several carriers assenting to the Marshalling and Distributing Plan, 1931, receipt whereof is hereby acknowledged, and in further consideration of the assent and agreement of each of said carriers to become bound by said Plan, The Railroad Credit Corporation, having been there-

Exhibit A-1—(Continued)

unto duly authorized by resolution of its Board of Directors, a certified copy of said resolution, marked "Exhibit A," being hereto attached, hereby assents to said Plan and agrees to be bound by all its terms and conditions.

THE RAILROAD CREDIT
CORPORATION,

By E. G. BUCKLAND

President.

Attest:

(Seal)

DANIEL WILLARD, JR.

Secretary. [5]

Form No. 1C. (12-16-31)

Whereas, This Corporation was created and organized by common carriers by railroad for the purpose of carrying out and facilitating the operation of the Marshalling and Distributing Plan, 1931,

Now, Therefore, be it

Resolved

(1) That the President of this Corporation be and he is hereby authorized to execute in the name and on behalf of this Corporation the Assent and Agreement to said Marshalling and Distributing Plan, 1931, in the form submitted at this meeting and marked by the Secretary for identification, with such changes therein and additions thereto as may be made by him upon advice of counsel; and the Secretary is authorized to affix the corporate seal thereto and attest the same;

Exhibit A-1—(Continued)

(2) That, when sufficient assents have been given to said Plan to make it practically operative, the President of this Corporation be and he is hereby authorized to agree that sufficient assents have been so given.

I Hereby Certify that the foregoing is a true and correct copy of a resolution presented to and adopted by the Board of Directors of The Railroad Credit Corporation at a meeting of said Board duly called and held at New York, New York, the 16th day of December, 1931, a quorum being present and taking the above action.

(Seal)

DANIEL WILLARD, JR.

Secretary. [6]

Before the
Interstate Commerce
Commission

Fifteen Per Cent Case, 1931

Ex Parte No. 103

In the Matter of Increases in Freight
Rates and Charges

ASSENT

Whereas, in the above entitled proceeding, the Interstate Commerce Commission, on the 16th day of October, 1931, filed its report proposing increases in certain specified freight rates, the revenues from such increases to be marshalled for the purpose of avoiding defaults in the payment of fixed interest obligations and to stabilize the railroad industry; and

Exhibit A-1—(Continued)

Whereas, in such report the Commission suggested that a plan for so marshalling the fund arising from the proposed increase in rates should be worked out by the carriers and submitted for the Commission's approval; and

Whereas, on the 19th day of November, the carriers having worked out such a plan, the Association of Railway Executives filed in this proceeding its petition submitting for the Commission's approval [7] the proposed plan together with a draft of a proposed charter for a corporation to carry out and administer the plan together with a draft of proposed by-laws for such corporation; and

Whereas, on the 28th day of November, 1931, argument in respect to such petition and the plan therewith submitted was heard by the Commission; and

Whereas, on the 5th of December, 1931, the Commission rendered its decision thereon in which it says:

For the reasons above set forth, and because we desire to act promptly in this proceeding, in accordance with the duties imposed and the authority conferred upon us by the Interstate Commerce Act, and avoid delays which will be injurious to the general public, including the carriers, we hereby modify our original report to the extent of relieving the carriers from the necessity of complying with the pooling plan therein described. This will leave them free to apply in the premises their own loaning plan, but, since use of the latter plan will not be

Exhibit A-1—(Continued)

pooling, within the meaning of that term as used in section 5 (1) of the Interstate Commerce Act, and because loans by and between common carriers, as such, have not been included within the jurisdiction conferred upon us by Congress, we neither approve nor disapprove either the loaning plan or the agency the carriers say they expect and intend to use in making that plan effective. However, we rely on them to apply the funds to be derived from the authorized increases in rates in aid of financially weak railroads in [8] accordance with the purposes expressed in our original report and in the instant application pursuant thereto and the arguments thereon presented; and

Whereas it is now desired by the carriers to perfect and to put into operation the plan presented to the Commission as above stated as a means of accomplishing the purposes of the Commission as described in its original report herein:

Now, therefore, the..... company, duly authorized thereto by its Board of Directors or its Executive Committee, hereby assents to the plan, a draft of which is hereto attached, being in substance the plan presented to the Commission by the Association of Railway Executives with its said petition filed with the Commission on the 19th day of November, 1931, in the above entitled proceeding, and, in consideration of the benefits expected to accrue to it thereunder and

Exhibit A-1—(Continued)

of corresponding obligations entered into by other carriers, covenants and obligates itself to the Corporation mentioned in said plan and to the other assenting carriers to comply with all the terms and requirements of said plan and reserves to itself all of the rights and benefits that may accrue to it thereunder. This assent is expressly made subject to paragraph sixteen of said plan, which reads as follows:

“This plan shall not become effective as to any carrier unless it agrees that a sufficient [9] number have assented to make it practically operative, but shall become effective as to those so agreeing at a date not later than January 1, 1932, to be fixed by them.”

.....

Company

[Seal] By
Its President

Attest:

.....

Secretary. [10]

Before The
Interstate Commerce Commission
Fifteen Per Cent Case, 1931

Ex Parte No. 103

In the Matter of Increases in Freight Rates
and Charges

Plan providing for the disposition of the increase in revenue growing out of the increases in rates on commodities and classes of traffic specified in the

Exhibit A-1—(Continued)

Appendix to the Commission's report, filed December 5, 1931, and to be known as the Marshalling and Distributing Plan, 1931.

1. A corporate agency to be created and organized, under the name of The Railroad Credit Corporation, for the purpose of collecting, receiving and administering the fund growing out of the increase in rates scheduled by the Commission for an increase in the Appendix to its report in this proceeding, filed December 5, 1931. It shall be incorporated under the laws of the State of Delaware. Its administrative offices will be located in the City of Washington, D. C. A draft of its proposed charter, or Certificate of Incorporation, and [11] of its proposed by-laws is hereto attached. It is hereinafter referred to as the Corporation.

2. All carriers by railroad or by water, rates of which are subject to the jurisdiction of the Interstate Commerce Commission, may file tariffs providing for the rate increases specified in the Appendix to the Commission's report; and all such carriers by railroad assenting to the plan as in the next succeeding paragraph provided shall be participants in the plan as hereinafter indicated; but no carrier already in default as to its fixed interest obligations, or which is in receivership, or which derives less than fifty per cent of its revenues from freight transportation, and no carrier by water, shall either contribute to, or receive from, the fund any amount whatever. The participants in the plan are hereinafter referred to as the participating carriers.

Exhibit A-1—(Continued)

3. Any carrier eligible to participate, except as limited by the next preceding paragraph, shall, upon execution of its written assent to this plan, become and be a participating carrier hereunder and obligated to make payments into the fund in the amounts and at the times hereinafter specified, and shall thereby confer upon the Corporation full power and authority to deal with, administer and apply the fund, so paid to it, to and for the purposes of the plan and to do and perform any and all other things necessary or appropriate to carry out and effectuate its purposes.

4. The amount to be paid into the fund, by each of the participating carriers, shall be the gross revenue received by it from the increase of rates [12] scheduled by the Commission to be increased in the Appendix to its report in this proceeding, filed December 5, 1931; provided, however, that if any participating carrier is required to pay a tax or taxes because of the receipt by it of revenue from the proposed increase in rates, it shall, upon payment thereof, be entitled to withdraw from the Corporation, and the Corporation shall refund to it, the amount of such tax or taxes. In no case shall a participating carrier be required to pay into the fund any amount (except interest on delayed payment) not derived from the increase then in force in rates made pursuant to the Commission's proposal.

5. The amount derived from the increase in rates shall, as nearly as possible, be ascertained and stated

Exhibit A-1—(Continued)

by each participating carrier within forty days after the month in which it accrues, and shall be paid to the Corporation within ten days after the expiration of the forty-day period, to constitute a fund for the purposes hereinafter specified. Similar payments into the fund shall thereafter be made monthly and, if not paid when due, the amount thereof shall bear interest at the rate of eight per cent per annum. Monthly report of such payments shall be made by each participating carrier to the Interstate Commerce Commission.

6. The expense of administration incurred by the Corporation shall be paid out of the fund.

7. The Corporation shall use the fund so provided to carry out the Commission's purpose to prevent, so far as practicable, defaults by railroad companies in their fixed interest obligations. To that end, and subject to the exceptions hereinafter [13] stated, it shall, upon the application of any participating carrier, if the amount in the fund at the time is sufficient for the purpose, make to the applicant such loan or loans therefrom as are necessary to enable it to meet its fixed interest obligations and to avoid default thereon; but no advance or loan from the fund shall be made for any other purpose and no advance or loan shall be made—

(a) To a carrier then in default or in receivership;

(b) To a carrier which derives less than fifty per cent of its revenues from freight transportation;

Exhibit A-1—(Continued)

(c) To a carrier which is able to meet its fixed interest obligations from its earnings, other income or other resources;

(d) To a carrier which, with the aid of the loan from the Corporation, would still be unable to meet its fixed interest obligations or to avoid a default.

(e) To a carrier by water;

(f) To a carrier which has not complied in full with its obligations under paragraph 4 of this plan.

(g) After May 31, 1933.

In determining the amount of the deficiencies in the earnings of an applicant and the necessity for making it a loan, the amount actually expended for maintenance (but not the amount charged to operating expenses on account of depreciation and retirements) in the period from July 1, 1930, to June 30, 1931, shall be used as the maximum of its maintenance charges, unless in the discretion of the Corporation a different period should in a special case be justified. [14]

8. Advances from the fund shall be represented by obligations of the participating carrier to the Corporation, bearing interest at the then current rediscount rate of the Federal Reserve Bank in the New York District, the interest rate to be adjusted quarterly, on the first days of January, April, July and October of each year, to such rediscount rate as then exists. The interest shall be payable semi-annually and the obligation shall fall due at such time as may be agreed upon between the applicant and the Corporation, not exceeding two years, hav-

Exhibit A-1—(Continued)

ing due regard to the accomplishment of the purpose of preventing default in the payment of fixed interest obligations, but renewable for an additional period of not exceeding two years, at the discretion of the Corporation.

No recipient of any loan made from the fund shall declare or pay any dividend until the loan has been fully repaid principal and interest, except in cases where, by contract or otherwise, the payment of a specific dividend is a fixed charge, which would, if not paid, result in a default in respect thereto.

9. In making loans from the fund the Corporation shall take as security the best available collateral, including, if required by the Corporation, the pledge of the amounts due or to become due an applicant on distribution as provided in paragraph 14 and with discretion to the Corporation, in any case of important public interest, to relax the requirements of this paragraph.

10. The Corporation shall make monthly reports to the Interstate Commerce Commission and to the [15] participating carriers, of its receipts, loans and disbursements, together with a summary of its current financial condition.

11. The Corporation shall have the power and authority to require reports from the participating carriers, and shall have the right of access to and audit of their books and records for the purposes of this plan.

12. The Corporation shall render to the Interstate Commerce Commission such periodical reports as the Commission may request, and the Commis-

Exhibit A-1—(Continued)

sion at all times shall have access to the books and records of the Corporation for inspection and audit.

13. Each railroad carrier making a separate operating report to the Interstate Commerce Commission, except those excluded from participation by paragraph 2 hereof, shall be under obligation to contribute to the fund and shall, subject to the provisions of paragraph 7, have the right to apply for and receive loans therefrom.

14. At least once in every six months the Board of Directors of the Corporation shall review its needs for funds to carry out and accomplish its purposes; and, if they shall at any time find that there is a balance in its hands over and above its requirements, such balance shall be distributed to the participating carriers in the proportion in which their respective earnings (not including interest paid in on delayed payments), less any amount repaid to them, respectively, as a refund for taxes, contributed to the fund, except that any distributable amount inuring to a carrier indebted [16] to the fund, instead of being paid to it, shall be credited on its obligation.

15. The obligation imposed by this plan to make payments into the fund shall continue in effect until such payments shall have been made in respect to all traffic moved up to and including March 31, 1933, and the Corporation shall exist and continue to function only for such period thereafter as may be necessary to collect all outstanding loans and obligations, make distribution of the remaining funds to the participating carriers in the proportion

Exhibit A-1—(Continued)

above mentioned, and generally to wind up and settle its affairs.

16. This plan shall not become effective as to any carrier unless it agrees that a sufficient number have assented to make it practically operative, but shall become effective as to those so agreeing at a date not later than January 1, 1932, to be fixed by them. [17]

CERTIFICATE OF INCORPORATION

of

THE RAILROAD CREDIT CORPORATION

First. The name of this corporation is The Railroad Credit Corporation.

Second. Its principal office in the State of Delaware is located at No. 100 West Tenth Street, in the City of Wilmington, County of New Castle. The name and address of its resident agent is The Corporation Trust Company, No. 100 West Tenth Street, Wilmington, Delaware.

Third. The nature of the business or objects or purposes proposed to be transacted, promoted or carried on by this corporation are as follows:

(a) To finance or participate in financing, through provision of credits (directly or indirectly) or otherwise, of common carriers by railroad throughout the continental United States, in such manner and on such terms as may seem expedient.

(b) To subscribe for, purchase, acquire, take, own, hold, buy, sell, assign, dispose of, transfer, pledge, hypothecate, mortgage, exchange and gen-

Exhibit A-1—(Continued)

erally deal and trade in and with securities, shares of stock, bonds, mortgages, debentures, notes, commercial paper, certificates of interest, certificates of deposit, certificates of indebtedness, bills and accounts receivable, evidence is of indebtedness, contracts, obligations and investments of all kinds, whether secured or unsecured, and to loan money on the security of any thereof, or without security, and to enter into contracts with others for joint participation in the purchase, issuance and sale thereof, and to make advances upon consignments of merchandise and commodities, and to hypothecate all such merchandise and commodities as security; and with power to transact all of the commercial and financial transactions pertaining to any of the businesses herein provided for.

(c) To purchase or otherwise acquire securities, assets and properties of every kind and description, including real estate, or any interest therein, at judicial, judiciary, trustee's, pledgee's, mortgagee's or liquidating or public or private sales of any kind, or tax sales and to carry on a general liquidation and realization business.

(d) To purchase, or in any manner acquire, and to hold, deal in, lease, mortgage and incumber real estate, both improved and unimproved, or any interest therein, wheresoever situate, and to subdivide, develop and improve the same for the purposes of sale or otherwise, and to invest, trade, deal in and deal with goods, wares and merchandise and real and personal property of every class and description.

(e) To organize, or cause to be organized, under

Exhibit A-1—(Continued)

the laws of the State of Delaware, or of any other State, Territory, or country, or the District of Columbia, a corporation or corporations, for the purpose of accomplishing any of the objects for which this corporation is organized, or for any other purpose or purposes, and to subscribe to the capital stock of and/or to make loans or advances to, or otherwise finance, such corporation or corporations, and to dissolve, wind up, liquidate, merge or consolidate any such corporation or corporations. [19]

(f) To borrow money for the purpose of meeting the operating expenses of the corporation, and to issue its obligations therefor.

(g) To do any and all things herein set forth, and in addition such other acts and things as are incident or conducive to the attainment of the purposes of this corporation, or any of them, to the same extent as natural persons lawfully might or could do in any part of the world, in so far as such acts are not inconsistent with the provisions of the laws of the State of Delaware.

The foregoing clauses shall be construed as expressing both objects and powers, and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation, and are in furtherance of, and in addition to, and not in limitation of, the general powers conferred by the laws of the State of Delaware.

It is the intention that the purposes, objects and powers specified in this paragraph Third and all subdivisions thereof shall be limited and restricted to carrying out and facilitating the operation of

Exhibit A-1—(Continued)

the Marshalling and Distributing Plan, 1931, hereinafter referred to in paragraph Eleventh.

Fourth. The total number of shares of stock which the corporation shall have authority to issue is twelve and the par value of each of said shares is One Hundred Dollars (\$100.00) amounting in the aggregate to Twelve Hundred Dollars (\$1,200.00).

Fifth. The amount of capital with which this corporation will commence business is Twelve Hundred Dollars (\$1,200.00). [20]

Sixth. The names and places of residence of the incorporators are as follows:

Names	Residence
C. S. Peabbles	Wilmington, Delaware
L. E. Gray	Wilmington, Delaware
L. H. Herman	Wilmington, Delaware

Seventh. The names and places of residence of the first board of directors shall be as follows:

Names	Residence
J. J. Bernet	Cleveland, Ohio
E. N. Brown	New York, N. Y.
E. G. Buckland	New Haven, Conn.
A. J. County	St. Davids, Pa.
P. E. Crowley	Mt. Vernon, N. Y.
L. A. Downs	Chicago, Ill.
G. B. Elliott	Wilmington, N. C.
A. D. McDonald	New York, N. Y.
J. J. Pelley	New Haven, Conn.
B. M. Robinson	Washington, D. C.
H. A. Scandrett	Evanston, Ill.
G. M. Shriver	Pikesville, Md.

Exhibit A-1—(Continued)

Eighth. The existence of this corporation is to continue until December 31, 1937.

Ninth. The private property of the stockholders of this corporation shall not be subject to the payment of corporate debts to any extent whatever.

Tenth. The number and qualifications of directors of this corporation and the method of nominating them shall be fixed and may be altered from time to time, as may be provided in the by-laws. In case of vacancies in the board of directors the [21] latter may elect directors to fill such vacancies, pursuant to the provisions of the by-laws, to hold office until the next annual meeting of the stockholders and until their respective successors shall have been duly elected and qualified.

Eleventh. This corporation is organized by common carriers by railroad in continental United States for the purpose of carrying out and facilitating the operation of the plan worked out by said carriers in response to the suggestion of the Interstate Commerce Commission in Ex Parte 103, and known as the Marshalling and Distributing Plan, 1931, for marshalling, through collections by this corporation from the several carriers as provided in said plan, revenues derived from the increases in rates and charges authorized in the report filed December 5, 1931, in Ex Parte 103, also from any modifications thereof, or additions or supplements thereto, and for distributing, through loans to carriers in need thereof under such plan, such part or all of the funds so collected and accumulated as may be required for this purpose; and the board of di-

Exhibit A-1—(Continued)

rectors is hereby authorized and empowered to take any and all action and to exercise any and all of the powers of this corporation which it may, in its discretion, deem advisable or proper to carry out the purposes aforesaid, whether resulting in profit or not. No dividends shall be declared or paid on the capital stock of this corporation.

In furtherance, and not in limitation, of the powers conferred by statute, the board of directors is expressly authorized: [22]

(a) To fix, determine and vary from time to time the amount to be maintained as surplus and the amount or amounts to be set apart as working capital.

(b) To make, amend, alter, change, add to or repeal by-laws for this corporation, without any action on the part of the stockholders. The by-laws made by the board of directors may be amended, altered, changed, added to or repealed by the stockholders.

(c) To sell, assign, convey and otherwise dispose of any part of the property, assets and effects of this corporation, in the regular course of business, on such terms and conditions as it shall deem advisable, without the assent of the stockholders in writing or otherwise; and also to sell, assign, transfer, convey and otherwise dispose of the whole or substantially the whole of the property, assets, effects, franchises and good will of this corporation on such terms and conditions as it shall deem advisable, but only with the assent in writing or pursuant to the affirmative vote of the holders of not

Exhibit A-1—(Continued)

less than the majority in interest of the stock then outstanding but in any event not less than the amount required by law.

(d) To receive from time to time, without assent or other action of the stockholders of this corporation, subscriptions for, and to sell any or all of the then unissued capital stock of this corporation.

All of the powers of this corporation, in so far as the same lawfully may be vested by this certificate in the board of directors, are hereby conferred upon the board of directors of this corporation. [23]

No director or officer of this corporation shall be held accountable to any stockholder or creditor of this corporation, or to anyone whomsoever, for any loss, claim or liability resulting from any action taken or power exercised in good faith hereunder.

If the by-laws of this corporation shall so provide the stockholders and directors shall have power to hold their meetings either within or without the State of Delaware, and to have one or more offices outside the State of Delaware; to keep the books and records of this corporation (except as otherwise provided by the laws of the State of Delaware) outside of the State of Delaware, and at such place or places as may from time to time be designated by the board of directors.

The accounts and books of this corporation, or any of them, shall be open to the inspection of any stockholder during business hours.

Twelfth. In the absence of fraud no contract or transaction between this corporation and any other association or corporation shall be affected by

Exhibit A-1—(Continued)

the fact that any of the directors or officers of this corporation are directors or officers of such other association or corporation, provided that such contract or other transaction shall be authorized or ratified by the assent of at least seven of the directors of this corporation not so interested.

Thirteenth. Except where other notice is specifically required by statute written notice only of any stockholders' meeting given as provided in the by-laws shall be sufficient without publication or other form of notice. [24]

Fourteenth. Any officer elected or appointed by the board of directors, or by the stockholders, or any member of any committee, may be removed at any time, with or without cause, in such manner as shall be provided in the by-laws of this corporation.

Fifteenth. This corporation may in its by-laws make any other provisions or requirements for the management or conduct of the business of this corporation, provided the same be not inconsistent with the provisions of this certificate, or contrary to the laws of the State of Delaware or of the United States.

Sixteenth. This corporation reserves the right to amend, alter, change, add to or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on officers, directors and stockholders herein are granted subject to this reservation: Provided, however, that wherever in this certificate or by the laws of the State

Exhibit A-1—(Continued)

of Delaware the written consent or affirmative vote is required of the holders of a designated proportion of the capital stock of this corporation to any specified act or thing, then and in that event any amendment, alteration, change, addition to or repeal of any such provision shall require the written consent or affirmative vote of the holders of such designated proportion of the capital stock of this corporation.

We, the undersigned, being each of the incorporators hereinbefore named for the purpose of forming a corporation to do business, both within and without the State of Delaware, and in pursuance of the General Corporation Law of the State of Delaware, being Chapter 65 of the Revised Code of Delaware, and the acts amendatory thereof, and supplemental thereto, do make and file this certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly have hereunto set our hands and seals, this.....day of December, 1931.

C. S. PEABBLES,

L. E. GRAY,

L. H. HERMAN.

In presence of

Harold E. Grantland.

State of Delaware

County of New Castle—ss.

Be It Remembered, that on thisday of December, 1931, personally came before me, Harold E. Grantland, a Notary Public for the State of Delaware, C. S. Peabbles, L. E. Gray and L. H.

Exhibit A-1—(Continued)

ers to order and act as chairman thereof. In case neither the president nor a vice president is present, any stockholder present may call the meeting to order, and the stockholders present may elect a chairman of such meeting.

The secretary of the corporation shall act as secretary at all meetings of the stockholders. In his absence the chairman may appoint any person to act as secretary.

Section 5. At each meeting of the stockholders every stockholder shall be entitled to vote in person or by proxy appointed by an instrument in writing subscribed by such stockholder or by his duly authorized attorney and delivered to the judges of election at the meeting, and he shall have one vote for each share of stock registered in his [28] name at the time of the closing of the transfer books for said meeting. No share of stock shall be voted on at any election which has been transferred on the books of the corporation within twenty (20) days next preceding such election. The vote for directors, and, upon the demand of any stockholder, the vote upon any question before the meeting, shall be by ballot.

Section 6. All elections of directors and all votes where a ballot is required shall be conducted by two judges of election who shall be appointed by the board of directors; but, in the absence of such appointment by the board of directors, the chairman of the meeting shall appoint such judges who shall not be directors or candidates for office of director.

Exhibit A-1—(Continued)

Section 7. Of the total number of directors to be elected at the annual meeting of stockholders ten shall be nominated by districts as provided in this Section, and one shall be nominated by the board of directors of The American Short Line Railroad Association. For the purposes of such nomination, the continental United States shall be divided into three districts, known as the Eastern District (including New England), the Southern District and the Western District.

The stockholders shall nominate one person for director at large. There shall be no other nominations for the board of directors

The Eastern District shall be bounded by the Atlantic Seaboard from the Canadian boundary to Norfolk, Virginia, by the main line of the Norfolk and Western Railway from Norfolk, Virginia, to [29] Kenova, West Virginia, by the main line of the Chesapeake & Ohio Railway from Kenova, West Virginia, to Cincinnati, Ohio, by the Ohio River from Cincinnati, Ohio, to Cairo, Illinois, by the Mississippi River from Cairo, Illinois, to the mouth of the Illinois River at or near Grafton, Illinois, by the Illinois River from Grafton, Illinois, to Pekin, Illinois, by a line south and east of the Atchison, Topeka and Santa Fe Railway from Pekin, Illinois, through Joliet and Streator, Illinois, to Chicago, Illinois, by a line drawn from Chicago, Illinois, to include the Southern Peninsula of Michigan, and thence following the Canadian boundary to the Atlantic Seaboard; including, however, the Norfolk and Western Railway, the Chesapeake & Ohio Rail-

Exhibit A-1—(Continued)

way, the Canadian National Railways and the Virginian Railway.

The Southern District shall be bounded by the Atlantic Seaboard on the east, by the Eastern District on the north, by the Mississippi River on the west, and by the Gulf of Mexico on the south.

The Western District shall be bounded by the Eastern District and the Southern District on the east, by the Gulf of Mexico and the Mexican boundary on the south, by the Pacific Ocean on the west, and by the Canadian boundary on the north.

Each Class I common carrier by railroad shall be deemed a member of the district in which its line of railroad is located, or if located in more than one district, of the district in which the greater portion of the main-line mileage of its system is located.

Five directors shall be nominated by the members of the Eastern District, one of said five directors being from New England; three directors shall be nominated by the members of the Western District; and two directors shall be nominated by the members of the Southern District.

Not more than fifty (50) nor less than fifteen (15) days prior to the date of the annual meeting of the stockholders, the secretary of the corporation shall send to each Class I common carrier by railroad and to The American Short Line Railroad Association a form of vote for nominations for directors, stating the number of directors to be nominated by the members of each district and by The

Exhibit A-1—(Continued)

American Short Line Railroad Association. The recipients thereof shall thereupon name the person or persons (not more than the number specified by the secretary) proposed by them under the provisions of this Section as the nominee or nominees for director or directors, and return such vote to the secretary. Each Class I railroad in voting for its nominee, or each of its said nominees, shall be entitled to a voting power proportional to the amount it has paid into said corporation, less any distribution theretofore made.

The secretary shall canvass the nominating votes of the members of each district or class of railroads received by him prior to such annual meeting and shall report the same to the stockholders at the meeting. The five persons (one of whom shall be from New England) receiving the most nominating votes in the Eastern District shall be the nominees of that district. The three persons receiving the most nominating votes in the [31] Western District shall be the nominees of that district. The two persons receiving the most nominating votes in the Southern District shall be the nominees of that District.

Section 8. Written notice of the annual or any special meeting of the stockholders, stating the time and place of such meeting, shall be mailed, postage prepaid, at least ten (10) days before such meeting, to each stockholder at such address as appears on the stock books of the corporation or at his last known post-office address.

Every stockholder who shall attend any meeting

Exhibit A-1—(Continued)

of stockholders in person or by proxy shall be deemed to have waived notice of such meeting, and if any stockholder shall, in person or by attorney thereunto authorized in writing, or by telegraph, cable, radio or wireless, waive notice of any meeting, whether before or after such meeting be held, notice thereof need not be given to him. Notice of any adjourned meeting of the stockholders shall not be required to be given except when expressly required by law.

Section 9. A complete list of the stockholders entitled to vote, arranged in alphabetical order with the address of each and the number of shares held by each, shall be prepared by the secretary at least ten (10) days before every election and shall be open at the place where said election is to be held for said ten (10) days to the examination of any stockholder, and shall be produced and kept at the time and place of election during the whole time thereof, and subject to the inspection of any stockholder who may be present. [32]

Section 10. Special meetings of the stockholders for any purpose or purposes, other than those regulated by statute, shall be called by the president or a vice president or the secretary whenever the board of directors shall so direct, and shall also be called at the request in writing of stockholders owning one-sixth of the shares of the capital stock of the corporation then issued and outstanding. Any such request shall state the purpose or purposes of the proposed meeting.

Exhibit A-1—(Continued)

Section 11. The business transacted at a special meeting shall be confined to the object or objects stated in the call.

Section 12. Written notice of any special meeting of the stockholders stating the time, place and object thereof shall be mailed, postage prepaid, at least ten (10) days before such meeting to each stockholder at such address as appears on the stock books of the corporation or at his last known post-office address.

ARTICLE IV.

Directors

Section 1. The property, business, and affairs of the corporation shall be managed by its board of directors, which shall consist of twelve members, none of whom need be a stockholder, but all of whom, except the director who is president, shall be an officer or director of a common carrier by railroad or of an association of common carriers by railroad. The number of directors may be altered by an amendment to these by-laws. The directors elected at the first meeting of the incorporators, and at each annual meeting thereafter, shall hold office until the next annual meeting and until their successors are duly elected and qualified. No compensation shall be paid to any director for his services as director.

Section 2. The board of directors may hold their meetings and may have one or more offices and keep the books of the corporation, except the original or duplicate stock ledger, at such place or places in the State of Delaware or outside of the

Exhibit A-1—(Continued)

State of Delaware as they may from time to time determine.

Section 3. In addition to the powers and duties by these by-laws expressly conferred upon them, the board of directors may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these by-laws directed or required to be exercised or done by the stockholders.

ARTICLE V.

Meetings of The Board

Section 1. For the purpose of organization and otherwise each newly elected board of directors shall hold a regular meeting on the day of, but following, the annual meeting of the stockholders, or at such later time as shall be fixed by vote of the stockholders at the annual meeting, or they may meet at the place and time for the next regular meeting of the board of directors, and no notice of such meeting shall be necessary to the newly [34] elected directors in order legally to constitute the meeting.

Section 2. At all meetings of the board of directors seven directors shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation or by these by-laws. No loan

Exhibit A-1—(Continued)

shall be made by the corporation unless authority therefor be given at a meeting by a majority vote of the entire board of directors.

Section 3. Regular meetings of the board shall be held monthly at such time and place as shall be designated in the call for the meeting. Five (5) days' notice to each director personally or by mail or by telegraph or telephone shall be given of all regular meetings. (Amended Oct. 19, 1933—See margin)

[Marginal Note]: Section 3. Except as otherwise ordered by the directors or the Executive Committee, regular meetings of the Board shall be held monthly at such time and place as shall be designated in the call for the meeting. Five (5) days' notice to each director personally or by mail or by telegraph or telephone shall be given of all regular meetings.

Section 4. Special meetings of the board may be called by the president on five (5) days' notice to each director personally or by mail or by telegram or telephone, unless the president shall deem a shorter notice, but not less than two (2) days, expedient. Special meetings shall also be called by the president or secretary in like manner on the written request of any two directors.

Section 5. All regular and special meetings of the board except as otherwise herein provided shall be held at such place and at such time as shall be specified in the call of said meeting or in the waiver of notice thereof. [35]

Exhibit A-1—(Continued)

ARTICLE VI.

Committees

All committees designated or appointed by the board of directors shall keep regular minutes of their proceedings and report the same to the board at its next regular meeting.

ARTICLE VII.

Officers

Section 1. At the first meeting of the directors elected by the incorporators such directors shall elect one of their number as president and at the first meeting after each annual meeting of the stockholders the board of directors shall elect from their number as president the person elected by the stockholders as director at large; and they shall also elect one or more vice presidents, a treasurer and a secretary, none of whom need be a member of the board. The board may also appoint one or more assistant treasurers, one or more assistant secretaries, and such other officers and agents as the board may deem advisable, all of whom shall respectively have such authority and perform such duties as from time to time may be prescribed by the board.

Section 2. The officers so elected or appointed shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the board of directors or by the stockholders, or any member of any committee, may be removed at any time with or without cause by the

Exhibit A-1—(Continued)

affirmative vote of a majority of all of the directors. [36]

Section 3. The president shall be the chief executive officer of the corporation. He shall have general and active management of and exercise general supervision over the business and property of the corporation. He shall execute instruments in writing requiring a seal, in the name, on behalf of and under the seal of the corporation. He shall preside at all meetings of the stockholders and of the board of directors. He shall have such other powers and duties as the board of directors may determine. He shall be ex officio a member of all standing committees.

Section 4. In the event of the death, resignation, retirement, disqualification, disability, sickness, absence, removal from office or refusal to act of the president, a vice president designated by the president or the board of directors shall perform the duties and exercise the powers of the president. The vice presidents shall have such powers and duties as the board of directors may determine.

Section 5. The secretary shall attend all meetings of the stockholders and board of directors and act as secretary of the meeting and record all resolutions and minutes of all proceedings in a book to be kept for that purpose. He shall also, when so requested, act as secretary of any committee appointed by the board. He shall give, or cause to be given, notice of meetings of the stockholders and board of directors, and shall have such other powers and duties as may be prescribed by the board of di-

Exhibit A-1—(Continued)

rectors or by the president, under whose supervision the secretary shall be. The secretary shall keep in safe custody the stock books and the [37] seal of the corporation and, when authorized by the board of directors, or president, shall affix the seal to any instrument requiring the same. The assistant secretaries shall have such powers and perform such duties as may be prescribed by the president, the secretary, or board of directors.

Section 6. The treasurer shall have the custody of the corporate funds and securities, and shall keep full and accurate accounts of receipts and disbursements, in books belonging to the corporation, and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositaries as may be designated by the board of directors. He shall disburse the funds of the corporation as authorized, taking proper vouchers for such disbursements, and shall render to the president and directors, at the regular meetings of the board or whenever they may require it, an account of all his transactions as treasurer and of the financial condition of the corporation. He shall have such other powers and duties as the president or board of directors may determine. The assistant treasurers shall have such powers and perform such duties as may be prescribed by the president, the treasurer, or the board of directors.

Section 7. The board of directors may by resolution, or the president may, require any officers,

Exhibit A-1—(Continued)

agents, or employees of the corporation to furnish bonds conditioned for the faithful performance of their respective duties, with a surety company satisfactory to the board of directors or president, as surety, the expense of which shall be paid by the corporation. [38]

ARTICLE VIII.

Vacancies

If in any office that may be filled by the board of directors a vacancy shall occur for any reason, or the office of any director shall become vacant, then and in that event the board of directors, or a majority of the remaining directors, may elect or appoint a successor or successors who shall hold office until the next annual election, unless sooner displaced. Any vacancy in the board of directors shall be filled by a director of like qualifications as to director representation as those of his predecessor.

ARTICLE IX.

Duties of Officers and Agents May
Be Delegated

In the event of death, resignation, retirement, disqualification, disability, sickness, absence, removal from office or refusal to act of any officer or agent of the corporation, or for any reason that the board of directors may deem sufficient, the board of directors may delegate for the time being the powers or duties of such officer or agent to any other officer or agent or to any director.

Exhibit A-1—(Continued)

ARTICLE X.

Certificates of Stock

The certificates of stock of the corporation shall be numbered and shall be entered in the books of the corporation as they are issued. They shall exhibit the holder's name and the number of shares and shall be signed by the president or a vice presi- [39] dent and the secretary or an assistant secretary, or treasurer or an assistant treasurer, and shall bear the corporate seal. They shall be in such form and contain such provisions as the board of directors may determine.

ARTICLE XI.

Transfer of Stock

Section 1. Transfer of stock shall be made on the books of the corporation only by the person named in the certificate or by attorney, lawfully constituted in writing, and upon surrender of such certificate.

Section 2. The board of directors may close the stock transfer books in its discretion for a period not exceeding twenty (20) days preceding any meeting, annual or special, of the stockholders.

Section 3. The corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, save as

Exhibit A-1—(Continued)

expressly provided by the laws of the State of Delaware.

Section 4. The board of directors may appoint one or more transfer agents and registrars of transfer, and may require all stock certificates to bear the respective signatures of such respective transfer agents and registrars. [40]

ARTICLE XII.

Lost Certificates

Any person claiming a certificate of stock to be lost or destroyed shall make an affidavit or affirmation of that fact, and advertise the same in such manner as the board of directors may require, and shall give the corporation a bond of indemnity in form and with one or more sureties satisfactory to the board of directors, in at least double the value of the stock represented by said certificate, whereupon a new certificate may be issued of the same tenor and for the same number of shares as the one alleged to be lost or destroyed, but always subject to the approval of the board of directors.

ARTICLE XIII.

Inspection of Books

The accounts and books of the corporation shall be open to the inspection of the stockholders during business hours.

Exhibit A-1—(Continued)

ARTICLE XIV.

Checks, Contracts, Etc.

Section 1. All checks, notes, drafts, acceptances, bills of exchange, orders for the payment of money, and all written contracts and instruments of every kind that do not require a seal shall be signed by such officer or officers or person or persons as the board of directors may from time to time by resolution prescribe.

Section 2. All instruments in writing that require the corporate seal of the corporation to be [41] affixed thereto, shall be signed and attested by such officer or officers as the board of directors may from time to time by resolution prescribe.

ARTICLE XV.

Fiscal Year

The fiscal year shall begin on the first day of January of each year.

ARTICLE XVI.

Section 1. Whenever under the provisions of these by-laws notice is required to be given to any stockholder, director or officer, it shall not be construed to mean personal notice, but such notice may be given by telephone, or, in writing, by letter, telegraph, radio, wireless, or cable, addressed to such stockholder, director or officer at such address as appears on the books of the corporation, or in default of such address to said stockholder, director or officer at his last known post-office ad-

Exhibit A-1—(Continued)

dress, and such notice shall be deemed to be given at the time when the same shall be thus sent or mailed.

Section 2. Any stockholder or director may waive any notice required to be given under the provisions of the General Corporation Law of the State of Delaware, the certificate of incorporation or these by-laws, whether before or after the time stated therein, and his presence at any meeting shall be deemed to be a waiver of notice of such meeting. [42]

ARTICLE XVII.

Amendments

These by-laws, or any of them, may be amended, altered, changed, added to or repealed by the board of directors at any regular or special meeting, provided that not less than a majority of the whole number of directors vote in the affirmative; provided, however, that no amendment of these by-laws shall be made by the board of directors in respect to matters set forth in Section 2 of Article V. [43]

by pledged, together with any that may be pledged hereafter or may have been pledged heretofore as security for this or any other obligation of the Railroad Company to the payee, shall be applicable in like manner to secure the payment of any and all such obligations. And all such securities in the hands of the payee shall stand as one general continuing collateral security for the whole of said obligations so that the deficiency on any one may be made good by enforcement of the rights and remedies of the payee in respect of the sale of collateral or otherwise as to the rest. And the Railroad Company hereby gives to the payee a lien for the amount of all the liabilities aforesaid upon all other property of the Railroad Company at any time coming into the possession of the payee. And the Railroad Company hereby agrees to remain responsible for any deficiency in payment, waiving any benefit, exemption, or privilege under any law now or hereafter to be in force.

The Railroad Company further agrees that on the nonperformance of the foregoing agreement to furnish additional security upon demand of the payee and/or upon nonperformance of any of the covenants or agreements made with the payee, as hereinafter defined, or upon the nonpayment of any of the above mentioned liabilities, or upon default in payment of interest on any of the said liabilities as the same may become due, or in case of insolvency or the appointment of a receiver for the Railroad Company or of its property, or assignment for the benefit of creditors, then in any such case the payee

is hereby authorized to sell, assign, transfer, and deliver any or all of said securities or interest therein or any substitute therefor, or any additions thereto, or any such other property, at such time or times, to such person or persons, and in such several parts or parcels as the payee may decide, and to sell the whole or any of such parts or parcels or interest therein, either at any broker's board or at public or private sale, either for cash, upon credit, or for future delivery, at the option of the payee, without demand, advertisement, or notice of the time or place of sale or adjournments thereof which are hereby expressly waived. Upon the nonpayment or the nonfulfillment of any of the conditions of this note, or upon any sale of any of the collateral security held by the payee or upon the appointment of a receiver of the Railroad Company or of its property or upon an assignment for the benefit of creditors as aforesaid, then the whole or any designated part of the liabilities of the Railroad Company to the payee shall mature at the election of the payee by presentation thereof for payment.

In case of any sale by the payee in pursuance of the terms of the last preceding paragraph of any or all of said securities or interest therein or other property on credit or for future delivery, the payee shall incur no liability in case of failure by the purchaser to take up and pay for such securities or such interest or such other property so sold. In case of any such failure the payee shall have the same right to dispose of said securities and interest

therein and such other property as are given in the last preceding paragraph to the same effect as though no sale had theretofore been made.

At any sale under the provisions of this instrument, the payee may itself purchase the whole or any part of the securities sold or interest therein or other property, free from all right of redemption on the part of the Railroad Company, which right is hereby waived and released. In case of any sale the payee may first deduct all expenses incident to the collection, sale, and delivery of the securities or property so sold, and any other expenses incurred by the payee in connection with such sale; and may then apply the residue to any one, or more, or all, of said liabilities, whether due or not due, returning the overplus, if any, to the Railroad Company, which shall remain liable to the payee for any deficiency remaining or existing after such sale. And the Railroad Company hereby further authorizes the payee, at its option, at any time, to appropriate and apply to the payment of any of the aforesaid liabilities, whether now existing or hereafter contracted, any and all property now or hereafter in the hands of the payee belonging to the Railroad Company, whether the aforesaid liabilities are then due or not due.

The Railroad Company further agrees that, upon any transfer of this note, the payee may deliver the securities or property held as security, or any part thereof, or interest therein, to the transferee, who shall thereupon become vested with all the powers and rights above given to the payee in re-

spect thereto for the purpose of securing and enforcing the payment to the holder of the whole or any part of the indebtedness evidenced by this note. And the payee shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter to the Railroad Company or to its successors or assigns.

The Railroad Company and indorsers and guarantors hereby waive presentment, protest, and notice of dishonor, and agree to remain bound for the payment of this note and all interest and charges thereon, and that the lien hereof and the pledge hereunder shall remain undisturbed, notwithstanding any extension of time, substitution of collateral, or other indulgence granted by the holder of this note, hereby waiving all notice of such extension, substitution, or other indulgence.

In the event this note, or any part thereof, is collected by an attorney, either with or without suit, the Railroad Company agrees to pay a reasonable attorney's fee and cost of collection.

The term payee shall mean and include The Railroad Credit Corporation and/or any successor, or assign, or liquidator, or transferee of The Railroad Credit Corporation or any other transferee of this note.

Until this note and interest thereon have been fully paid, the Railroad Company agrees not to pay any dividend on any of its capital stock (except on stock, if any, on which non-payment of a specific dividend constitutes a default).

In Witness Whereof the Railroad Company has caused this note to be executed by its Vice President and attested or countersigned by its Assistant Secretary, both being thereunto duly authorized, this 29th day of June, 1932.

Attest:

[Signed]

T. J. BYRNE

Assistant Secretary.

THE WESTERN PACIFIC
RAILROAD COMPANY

[Signed] By M. J. CURRY

Vice President.

Countersigned by:

.....
Title.....

Approved as to form and execution

[Signed]

D. WILLARD, JR.

Counsel 6/29/32

July 15, 1933—Paid on Account of Principal

		Distribution No. 1	\$ 7,353.01
Aug. 15, 1933—	“ “	2	1,838.25
Oct. 16, 1933—	“ “	3	3,676.50
Oct. 16, 1933—	“ “	3 Sac. Nor.	481.33
Dec. 15, 1933—	“ “	Tax Refund	3,114.11
Dec. 30, 1933—	“ “	4 Sac. Nor.	722.00
Dec. 30, 1933—	“ “	4 W. Pac.	5,514.76
Jan. 31, 1934—	“ “	5 Sac. Nor.	192.53
Jan. 31, 1934—	“ “	5 W. Pac.	1,551.97
Mar. 5, 1934—	“ “	3, 4 & 5 Dep. Creek	11.32
May 7, 1934—	“ “	Tax Refunds	3,114.11
June 30, 1934—	“ “	8 W. Pac.	4,864.12
		Sac. Nor.	612.59
		Dp. Creek	5.66

July 31, 1934—Paid on Account of Principal				
		Distribution No. 9 W. Pac.	1,786.20	
		Sac. Nor.	231.91	
		Dp. Creek	1.89	
Sept. 30, 1934—	“	“	10 W. Pac.	1,786.20
		Sac. Nor.	231.91	
		Dp. Creek	1.89	
Oct. 31, 1934—	“	“	11 W. Pac.	1,786.20
		Sac. Nor.	231.91	
		Dp. Creek	1.89	
Nov. 30, 1934—	“	“	12 W. Pac.	3,572.40
		Sac. Nor.	463.82	
		Dp. Creek	3.77	
Dec. 31, 1934—	“	“	13 W. Pac.	1,786.20
		Sac. Nor.	231.91	
		Dp. Creek	1.89	
Jan. 31, 1935—	“	“	14 W. Pac.	1,786.20
		Sac. Nor.	231.91	
		Dp. Creek	1.89	
Feb. 20, 1935—	“	“	Tax Refunds	1,306.35
Mar. 31, 1935—	“	“	15 W. Pac.	1,442.09
		Sac. Nor.	187.62	
		Dp. Creek	1.89	
Apr. 30, 1935—	“	“	16 W. Pac.	1,774.73
		Sac. Nor.	230.44	
		Dp. Creek	1.89	
May 24, 1935—	“	“	Std. Realty & Dev. Co. interest	1,331.50
May 31, 1935—	“	“	17 W. Pac.	1,774.73
		Sac. Nor.	230.44	
		Dp. Creek	1.89	
June 30, 1935—	“	“	18 W. Pac.	1,774.73
		Sac. Nor.	230.44	
		Dp. Creek	1.89	
July 31, 1935—	“	“	19 W. Pac.	1,774.73
		Sac. Nor.	230.44	
		Dp. Creek	1.89	
Aug. 31, 1935—	“	“	20 W. Pac.	1,774.73
		Sac. Nor.	230.44	
		Dp. Creek	1.89	

EXHIBIT A-3

R.C.C. No. 5 6-16-32.

NOTE OF BORROWING CARRIER

New York, N. Y.,
March 25th, 1933.

\$1,293,439.00

On demand, but if no demand is made, then on or before March 24th, 1935, The Western Pacific Railroad Company, a corporation of the State of California (hereinafter called the "Railroad Company"), for value received, promises to pay to The Railroad Credit Corporation (hereinafter called the "payee"), or order, at its office in Washington, D. C., in gold coin of the United States of America of the present standard of weight and fineness, One Million two hundred ninety-three thousand four hundred thirty-nine Dollars, with interest thereon payable semi-annually at the rate of $3\frac{1}{2}$ per cent per annum from the date thereof, to and including the 31st day of March, 1933, and thereafter at rates to be fixed as provided in the Marshalling and Distributing Plan, 1931, and until payment of said principal sum, with the option on the part of the Railroad Company to repay the whole or any part of said principal sum, with accrued interest thereon, at any time before maturity; having deposited with the payee as collateral security for the payment of this note and any extension or renewal thereof, as well as for the payment of any other liability or liabilities of the Railroad Company to the payee due or to become due, or which may hereafter be

contracted or existing, the following described property:

\$2,000,000, principal amount of The Western Pacific Railroad Company's General and Refunding Mortgage Gold Bonds, Series B. In addition thereto, The Railroad Company has caused The Western Pacific Railroad Corporation to pledge with and assign to The Railroad Credit Corporation, as further security for this note and upon the terms and conditions set forth in that certain instrument of pledge bearing even date herewith and executed by said The Western Pacific Railroad Corporation, any and all claim or claims which said The Western Pacific Railroad Corporation has or may have against:

(1) The Western Pacific Railroad Company in the sum of \$5,494,722.00 for advances to said The Western Pacific Railroad Company;

(2) The Standard Realty and Development Company in the sum of \$120,000.00, for advances to said The Standard Realty and Development Company;

(3) Sacramento Northern Railway and/or The Western Pacific Railroad Company in the sum of \$856,260.00 for advances shown on the books of the Railroad Corporation as indebtedness of Sacramento Northern Railway, subject to any and all rights and claims, if any, of the trustees or the holders of any of the bonds issued under the First Mortgage dated June 26, 1916, executed by The Western Pacific Railroad Company to the First Federal Trust Company (now Crocker First Federal Trust Company) and Henry E. Cooper, as

trustees, including, without limiting the generality of the above proviso, the lien, if any, of said First Mortgage upon said claim or claims and also the obligation, if any, of The Western Pacific Railroad Company or of the Railroad Corporation pursuant to the terms and provisions of said First Mortgage to cause said claim or claims to be discharged or to pledge the same under said First Mortgage.

Further in addition thereto the A. C. James Co., at the request of the Railroad Company has deposited and pledged with The Railroad Credit Corporation, \$2,000,000. principal amount of The West- to the provisions of a receipt therefor this day given to the A. C. James Co. by The Railroad Credit Corporation, \$2,000,000. principal amount of The Western Pacific Railroad Company's General and Refunding Mortgage Gold Bonds, Series A, evidenced by temporary certificate numbered T-5.

1933

Sept. 26 Paid on Account of Interest....\$19,796.80

Oct. 27 Paid on Account of Interest
to Sept. 25, 1933 215.58

1934

Apr. 30 Paid on Account of Interest.... 12,031.16 7th dis. W.P.
32,043.54

, and subject to the authorization of the Interstate Commerce Commission when and to the extent required by the law,

In addition thereto, the Railroad Company agrees to pledge and does hereby pledge with the payee, the Railroad Company's distributive share in the fund established under the aforesaid Plan, as the same may be at any time and from time to time deter-

nined, and also all right, title and interest of the Railroad Company in and to any and all securities now or hereafter deposited as collateral security for any loan or loans from the Reconstruction Finance Corporation to the Railroad Company, subject always to the lien thereon of said Reconstruction Finance Corporation.

The Railroad Company hereby agrees, on demand of the payee, to deposit with the payee such additional security as the payee may from time to time demand, and further agrees that the securities hereby pledged, together with any that may be pledged hereafter or may have been pledged heretofore as security for this or any other obligation of the Railroad Company to the payee, shall be applicable in like manner to secure the payment of any and all such obligations. And all such securities in the hands of the payee shall stand as one general continuing collateral security for the whole of said obligations so that the deficiency on any one may be made good by enforcement of the rights and remedies of the payee in respect of the sale of collateral or otherwise as to the rest. And the Railroad Company hereby gives to the payee a lien for the amount of all the liabilities aforesaid upon all other property of the Railroad Company at any time coming into the possession of the payee. And the Railroad Company hereby agrees to remain responsible for any deficiency in payment, waiving any benefit, exemption, or privilege under any law now or hereafter to be in force.

The Railroad Company further agrees that on the nonperformance of the foregoing agreement to furnish additional security upon demand of the payee and/or upon nonperformance of any of the covenants or agreements made with the payee, as hereinafter defined, or upon the nonpayment of any of the above mentioned liabilities, or upon default in payment of interest on any of the said liabilities as the same may become due, or in case of insolvency or the appointment of a receiver for the Railroad Company or of its property, or assignment for the benefit of creditors, then in any such case the payee is hereby authorized to sell, assign, transfer, and deliver any or all of said securities or interest therein or any substitute therefor, or any additions thereto, or any such other property, at such time or times, to such person or persons, and in such several parts or parcels as the payee may decide, and to sell the whole or any of such parts or parcels or interest therein, either at any broker's board or at public or private sale, either for cash, upon credit, or for future delivery, at the option of the payee, without demand, advertisement, or notice of the time or place of sale or adjournments thereof which are hereby expressly waived. Upon the nonpayment or the nonfulfillment of any of the conditions of this note, or upon any sale of any of the collateral security held by the payee or upon the appointment of a receiver of the Railroad Company or of its property or upon an assignment for the benefit of creditors as aforesaid, then the whole or any designated part of the

liabilities of the Railroad Company to the payee shall mature at the election of the payee by presentation thereof for payment.

In case of any sale by the payee in pursuance of the terms of the last preceding paragraph of any or all of said securities or interest therein or other property on credit or for future delivery, the payee shall incur no liability in case of failure by the purchaser to take up and pay for such securities or such interest or such other property so sold. In case of any such failure the payee shall have the same right to dispose of said securities and interest therein and such other property as are given in the last preceding paragraph to the same effect as though no sale had theretofore been made.

At any sale under the provisions of this instrument, the payee may itself purchase the whole or any part of the securities sold or interest therein or other property, free from all right of redemption on the part of the Railroad Company, which right is hereby waived and released. In case of any sale the payee may first deduct all expenses incident to the collection, sale, and delivery of the securities or property so sold, and any other expenses incurred by the payee in connection with such sale; and may then apply the residue to any one, or more, or all, of said liabilities, whether due or not due, returning the overplus, if any, to the Railroad Company, which shall remain liable to the payee for any deficiency remaining or existing after such sale. And the Railroad Company hereby further authorizes the payee, at its option,

at any time, to appropriate and apply to the payment of any of the aforesaid liabilities, whether now existing or hereafter contracted, any and all property now or hereafter in the hands of the payee belonging to the Railroad Company, whether the aforesaid liabilities are then due or not due.

The Railroad Company further agrees that, upon any transfer of this note, the payee may deliver the securities or property held as security, or any part thereof, or interest therein, to the transferee, who shall thereupon become vested with all the powers and rights above given to the payee in respect thereto for the purpose of securing and enforcing the payment to the holder of the whole or any part of the indebtedness evidenced by this note. And the payee shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter to the Railroad Company or to its successors or assigns.

The Railroad Company and indorsers and guarantors hereby waive presentment, protest, and notice of dishonor, and agree to remain bound for the payment of this note and all interest and charges thereon, and that the lien hereof and the pledge hereunder shall remain undisturbed, notwithstanding any extension of time, substitution of collateral, or other indulgence granted by the holder of this note, hereby waiving all notice of such extension, substitution, or other indulgence.

In the event this note, or any part thereof, is collected by an attorney, either with or without

suit, the Railroad Company agrees to pay a reasonable attorney's fee and cost of collection.

The term payee shall mean and include The Railroad Credit Corporation and/or any successor, or assign, or liquidator, or transferee of The Railroad Credit Corporation or any other transferee of this note.

Until this note and interest thereon have been fully paid, the Railroad Company agrees not to pay any dividend on any of its capital stock (except on stock, if any, on which non-payment of a specific dividend constitutes a default).

In Witness Whereof the Railroad Company has caused this note to be executed by its Vice President and attested or countersigned by its Assistant Secretary, both being thereunto duly authorized, this 25th day of March, 1933.

THE WESTERN PACIFIC
RAILROAD COMPANY

By M. CURRY

Vice President.

Attest:

[Seal]

T. J BYRNE

Assistant Secretary.

Countersigned by:

.....
Title

D. WILLIARD, JR.

5/25/37

EXHIBIT A-4

The Railroad Credit Corporation
804 Transportation Building
Washington, D. C.

Telephone National 1360

July 3, 1934 r

E. G. Buckland, President
E. R. Woodson, Vice President
A. B. Chapin, Treasurer
W. J. Kane, Secretary
Daniel Willard, Jr., Counsel

The Western Pacific Railroad Company,
37 Wall Street,
New York City.

Dear Sirs:

We refer to the letter written to you by the Reconstruction Finance Corporation dated June 23, 1934, and signed by the Chairman of such Corporation.

Subject to your obtaining from the holders of at least 75% of your outstanding First Mortgage Bonds, assents to the agreement of extension, dated as of March, 1, 1934, as modified by the additional conditions contained in the printed letter of The Western Pacific Railroad Company dated May 29, 1934 (omitting the condition that the Reconstruction Finance Corporation, The Railroad Credit Corporation, A. C. James Co. and The Western Pacific Railroad Corporation shall in writing unconditionally consent and agree as provided in par-

agraph 2 contained in said printed letter and substituting therefor that the Reconstruction Finance Corporation, The Railroad Credit Corporation, A. C. James Co. and The Western Pacific Railroad Corporation shall agree as herein set forth) and subject to your obtaining from the A. C. James Co., the Reconstruction Finance Corporation, and The Western Pacific Railroad Corporation an agreement with respect to their respective loans to your Company similar to the agreement herein contained (with like exception with respect to collateral held by them respectively), this Corporation agrees, in the circumstances, that it will not, prior to January 1, 1937 or should prior to such date receivers be appointed for the Railroad Company or the filing of a petition by or against it be allowed by the Court under Section 77 of the Federal Bankruptcy Act, as amended, [51] then prior to the appointment of such receivers or the allowance of the filing of such petition, whichever may be earlier, take any action with respect to collecting interest falling due during the calendar year 1934 on loans of this Corporation to the Railroad Company, and further agrees that, until such time as the 1934 extended interest on the First Mortgage Bonds shall be paid in full, the 1934 extended interest on such assenting First Mortgage Bonds shall be entitled to priority of payment over interest and principal of loans of this Corporation to the Railroad Company (except with respect to assets or the income therefrom on which any mortgage securing bonds comprised in the collateral pledged as secur-

ity for loans of this Corporation is a lien prior to the lien of said First Mortgage and except the collateral for such loans or the proceeds thereof or any payments which may be received by this Corporation therefrom or be realized by it out of the same and except the right of this Corporation to retain sums payable under the Marshalling and Distributing Plan, 1931) in any proceedings commenced prior to July 1, 1937, whether taken by this Corporation to enforce payment of interest or principal of such loans or otherwise.

Yours very truly,

THE RAILROAD CREDIT
CORPORATION

By (s) E. R. WOODSON
Vice President

[Endorsed]: Filed Sep. 12, 1935. [52]

Supreme Court of the United States

File No. 26591

Nos. 7, 8, 20, 33 & 61

October Term, 1942.

In the Matter of The Western

WESTERN PACIFIC RAILROAD COMPANY,
Debtor.

MANDATE

United States of America—ss.

The President of the United States of America,
To the Honorable the Judges of the District Court
of the United States for the Northern District
of California,

[Seal]

Greeting:

Whereas, lately in the United States Circuit Court of Appeals for the Ninth Circuit, in a cause between Western Pacific Railroad Corporation, The Western Pacific Railroad Company, Irving Trust Company, as Substituted Trustee Under the General and Refunding Mortgage of Western Pacific Railroad Company, et al., Appellants, and Institutional Bondholders Committee, Reconstruction Finance Corporation, Crocker First National Bank of San Francisco and Samuel Armstrong, Trustees of the First Mortgage of the Western Pacific Railroad Company. Appellees. No. 9714, wherein the judgment of the said Circuit Court of Appeals, entered in said cause on the 28th day of November,

A. D. 1941, as amended by order of February 12, 1942, is in the following words, viz:

“This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Northern District of California, Southern Division, and was duly submitted;

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the order of the said District Court in this cause approving a plan of reorganization be and hereby is reversed, with costs in favor of the Appellants and against the appellees and that this cause be, and hereby is remanded to the said District Court with directions to dismiss it or, in the court's discretion and on motion of any party in interest, refer it back to the Commission for further action.

It is further ordered, adjudged, and decreed by this Court, that the appellants recover against the appellees for their costs herein expended, and have execution therefor.” [53]

as by the inspection of the transcript of the record of the said United States Circuit Court of Appeal which was brought into the Supreme Court of the United States by virtue of writs of certiorari granted upon the petitions of Frederick H. Ecker, et al., Constituting the Institutional Bondholders Committee; Crocker First National Bank of San Francisco et al., Trustees, etc.; The Western Pacific Railroad Company. Reconstruction Finance Corporation; and Irving Trust Company, as Substituted Trustee, etc., agreeably to the act of Con-

gress, in such case made and provided, fully and at large appears. [54]

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and forty-two, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said United States Circuit Court of Appeals in this cause be, and the same is hereby, reversed; and that the judgment of the District Court in this cause, be, and the same is hereby, affirmed.

And It Is Further Ordered that costs in this Court be assessed against the losing parties on this review of the action of the District Court. This assessment is without prejudice to a motion for allowance for disbursements by respondents in accordance with Sec. 77 of the Bankruptcy Act, subsection (c) (12).

And It Is Further Ordered, That the prevailing parties here, Frederick H. Ecker, et al., constituting the Institutional Bondholders Committee, Crocker First National Bank of San Francisco and Samuel Armstrong, Trustees of the First Mortgage of the Western Pacific Railroad Company, and the Reconstruction Finance Corporation recover against the said appellants, Western Pacific Railroad Corporation, Western Pacific Railroad Company, Irving Trust Company, as Substituted Trustee, etc., et al., as follows:

Frederick H. Ecker, et al., constituting the Institutional Bondholders Committee—One Hundred Fifty-five Dollars and Sixty-two cents.

Crocker First National Bank of San Francisco and Samuel Armstrong. Trustees of the First Mortgage of the Western Pacific Railroad Company—Seventy-nine Dollars and Eighty Cents.

Reconstruction Finance Corporation—(To be paid by Western Pacific Railroad Corporation, et al., direct to Clerk, Supreme Court.) for their costs herein expended and have execution therefor.

And It Is Further Ordered that this cause be, and the same is hereby, remanded to the District Court of the United States for the Northern District of California.

March 15, 1943. [55]

You, therefore, are hereby commanded that such execution and proceedings be had in said cause, in conformity with the opinion and judgment of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said writ of certiorari notwithstanding.

Witness, the Honorable Harlan F. Stone, Chief Justice of the United States, the sixth day of May, in the year of our Lord one thousand nine hundred and forty-three.

(Signed) CHARLES ELMORE CROPLEY
Clerk of the Supreme Court
of the United States. [56]

Supreme Court of the United States
October Term, 1942

Cost of Crocker First National Bank of San Francisco, et al., in No. 8.

1942, October Term—Docketing cause and
filing record \$15.00; appearance, .50; fil-
ing praecipe .50; filing papers, \$4.25; fil-
ing briefs, \$20.00; submission, .20; order,
.20; filing and recording, .65; certified
copy of the order, \$5.00; continuance, .25;
transfer, \$1.00;

argument, .20; judgment, \$1.00; filing same,
.25; recording, .40; mandate, \$10.00; attor-
ney's docket fee, \$20.00; cost and copy, .40; 79.80

\$79.80

Fee Book, Page 46 148

Test:

CHARLES ELMORE CROPLEY
Clerk of the Supreme Court of
the United States.

By
Deputy [57]

Supreme Court of the United States
October Term, 1942

Cost of Frederick H. Ecker, et al., in No. 7.

1942, October Term—Docket cause and
filing record, \$15.00; appearance, .50; fil-
ing praecipe .50; filing papers, \$14.25; fil-
ing briefs, \$50; submission, .80; order, .20;
filing and recording, .65; certified copy of
the order, \$5.00; continuance .25; transfer,
\$1.00;

argument .20; judgment, \$1.00; filing
same, .25; recording, .40; mandate \$10.00
preparing record for printer, etc., .80;
cost of printing record \$34.42; attorney's
docket fee, \$20.00; costs and copy, .40;... 155.62

\$ 155.62

Fee Book, page 46 147

Test:

CHARLES ELMORE CROPLEY

Clerk of the Supreme Court of
the United States.

H. W. BARR

Hugh W. Barr

Deputy.

[Endorsed]: Filed May 13, 1943. [58]

[Title of District Court and Cause.]

No. 26591-S

PETITION OF REORGANIZATON COMMT-
TEE FOR AN ORDER CONSTRUING
PLAN OF REORGANIZATION IN VARI-
OUS RESPECTS AND RECONCILNG IN-
CONSISTENCIES THEREIN

Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, being all the members of the Reorganization Committee designated to put into effect and carry out the plan of reorganization of the debtor above named, hereby represent to the Court and petition as follows:

1. Subdivision V of the plan of reorganization of the debtor above named (hereinafter called "the plan") provides: [59]

"V. The construction of the plan by the court shall be final and conclusive. The court may cure any defect, supply any omission, or reconcile any inconsistency in such manner or to such extent as may be necessary or expedient in order to carry out the plan effectively."
(223 I.C.C. Rep. 455)

2. In order to expedite the work of your petitioners in carrying out the plan and consummating the reorganization, it is necessary that petitioners be advised by the Court as to the proper construction of certain provisions of the plan hereinafter mentioned and the manner of curing the defects and reconciling the inconsistencies hereinafter pointed out. The petitioners will then be able to

Court, the form and provisions of mortgages, bonds, coupons and other instruments which are necessary or desirable in connection with carrying out the plan.

I.

3. In its report of June 21, 1939, the Interstate Commerce Commission states as to the allotment of new securities to First Mortgage bondholders:

“Based upon our conclusion as to the relative priority, value, and equity of the various claims and the value of the new securities available in exchange therefor, we find that the new securities should be allotted as follows: (1) First-mortgage bondholders, \$19,716,040 of income-mortgage bonds, \$29,574,060 of preferred stock, and 230,593 shares of common stock, the common stock to be taken at the price of \$57 a share; * * *” (233 I.C.C. Rep. 417)

Paragraph 2 of subdivision P of the plan provides:

“2. Holders of existing first-mortgage bonds shall receive for each \$1,000, principal amount thereof, together with \$266.66 $\frac{2}{3}$ of interest accrued and unpaid thereon to January 1, 1939, approximately \$400 of income-mortgage $4\frac{1}{2}$ -percent bonds, series A, being 40 percent of the principal amount of said existing bonds; \$600 of 5-percent preferred stock, series A, being 60 percent of the principal amount of said bonds; and 4.67 shares of [60] common stock, being common stock taken at the price

of \$57 a share for 100 percent of said accrued and unpaid interest." (233 I.C.C. Rep. 451)

The language quoted above presents an inconsistency requiring reconciliation by the Court. The issue of 4.67 shares of common stock at the price of \$57 a share would not equal the exact amount stated of \$266.66 $\frac{2}{3}$ as the accrued and unpaid interest to January 1, 1939 on \$1,000 principal amount of First Mortgage bonds; nor, indeed, would the issue of common stock at the rate of 4.67 shares in respect of the accrued and unpaid interest on each \$1,000 principal amount of existing First Mortgage bonds result in an aggregate issue of 230,593 shares of common stock in respect of the aggregate of accrued and unpaid interest to January 1, 1939 upon all outstanding First Mortgage bonds, said 230,593 shares being the number of common shares allocated to the First Mortgage bonds under the provisions of the Commission's report of June 21, 1939 quoted above, and under subdivision P of the plan as indicated further by subtracting from the total shares authorized to be issued in the reorganization (319,441 shares; see subdivision N of the plan) the aggregate common shares allocated to secured creditors (88,848 shares; see paragraphs 3, 4 and 5 of subdivision P of plan.)

4. Notwithstanding the inconsistencies mentioned in paragraph 3 above, your petitioners, on advice of counsel, propose, subject to the approval of the Court, the issue of 4.67 shares of common stock in respect of all accrued and unpaid interest to January 1, 1939, in the amount of \$266.66 $\frac{2}{3}$ on each \$1,000 principal amount of First Mort-

gage bonds; which will result in an aggregate issue under the plan of 230,184,767 shares of common stock in respect of the aggregate of accrued [61] and unpaid interest to January 1, 1939, upon all First Mortgage bonds.

II.

5. Paragraphs 4 and 5 of subdivision P of the plan provide:

“4. The Railroad Credit Corporation shall receive in respect of its claim in the principal amount of \$2,455,610, together with \$146,503 of interest accrued and unpaid thereon to January 1, 1939, subject to the reduction of said amounts by the application, prior to the date of issue of the new securities under the plan, of any proceeds from the distributive shares of the company or its subsidiaries under the marshalling and distributing plan, 1931, approximately \$154,111 of income-mortgage 4½-percent bonds, series A; \$241,681 of 5-percent preferred stock, series A; and 35,425 shares of common stock, being common stock taken at the price of \$62 per share. The Railroad Credit Corporation's equity in the collateral securing the claim of the Reconstruction Finance Corporation is found to be without value.” (233 I.C.C. Rep. 452)

“5. The A. C. James Company shall receive in respect of its claim in the principal amount of \$4,999,800, together with \$1,249,950 of interest accrued and unpaid thereon to January

1, 1939 \$163,724 of income-mortgage 4½-percent bonds, series A; \$256,756 of 5-percent preferred stock, series A; and 37,635 shares of common stock, being an amount of common stock allotted to the claim of the Railroad Credit Corporation the same proportion that the principal amount of general and refunding mortgage bonds of the debtor held by the A. C. James Company as collateral for said claim, bears to the principal amount of such bonds held by the Railroad Credit Corporation as collateral for its claim.” (233 I.C.C. Rep. 452)

Subdivision R of the plan provides in part:

“* * * All collateral pledged by the debtor as security for notes to the Reconstruction Finance Corporation, the Railroad Credit Corporation, and the A. C. James Company shall be reduced to possession by the respective pledgees thereof, and shall be surrendered by them to the reorganized company and canceled, except that the Railroad Credit Corporation shall not release or surrender any right or interest in the distributive shares of the debtor or its subsidiaries under the marshaling and distributing plan, 1931, but any proceeds from such distributive shares after the effective date [62] of the plan shall become the property of and be retained by the Railroad Credit Corporation, but to the extent to which received prior to the issue of the new securities under the plan shall be applied in reduction of the

claim of the Railroad Credit Corporation in respect of which such new securities are to be issued at the rates provided in subdivision P. * * *” (233 I.C.C. Rep. 453)

District Judge St. Sure in his opinion approving the plan of reorganization used the following language (In re Western Pac. R. Co., 34 F. Supp. 493, 498):

“RCC and ACJ are allotted new securities on the following basis: From the new securities, which the Commission finds are properly issuable in respect of the refunding mortgage bonds held as collateral for the RFC, RCC, and ACJ notes, are deducted that proportion of each class which the principal amount of refunding mortgage bonds held by RFC as collateral bears to the total amount of pledged refunding mortgage bonds. The balance of such new securities is then divided between RCC and ACJ in proportion to the principal amounts of refunding mortgage bonds held by them respectively as collateral. The result is the allotment of common stock to RCC on its claim at the price of \$62 per share.

“The unsecured claims of the Western Pacific Railroad Corporation and the Western Realty Company, and other unsecured claims not entitled to priority over existing mortgage, are found by the Commission to be without value and not entitled to participate in the distribution of cash or securities of the reorganized company.”

6. The Railroad Credit Corporation has received since January 1, 1939, the effective date of the plan, proceeds from the distributive shares of the debtor and its subsidiaries under the marshaling and distributing plan of 1931 in the aggregate total amount of \$26,091.72; and further proceeds from such distributive shares may be received by The Railroad Credit Corporation prior to the issue of the new securities under the plan.

7. The Railroad Credit Corporation has taken the position that while it is required under the plan to (a) reduce the amount of its presently secured claim by the market value [63] of the securities allotted to it under paragraph 4 of subdivision P of the plan, and (b) by any proceeds received by it from the distributive shares of the debtor and its subsidiaries under the marshaling and distributing plan of 1931, and (c) by any proceeds received by it from the other pledged collateral, it is nevertheless entitled to receive and retain all securities allotted to The Railroad Credit Corporation under paragraph 4 of subdivision P of the plan, the balance of said claim being an unsecured claim against the debtor which the Commission in paragraph 6 of subdivision P of the plan has found to be without value.

8. The petitioners, upon advice of counsel, submit to the Court that the position so taken by The Railroad Credit Corporation is inconsistent with the provisions of the plan quoted in paragraph 5 hereinabove, and the petitioners ask the Court for a definitive construction of such quoted language so

that it will be possible for the petitioners to determine with certainty the exact amounts and number of securities to be allocated to The Railroad Credit Corporation upon consummation of the reorganization.

III.

9. The debtor's notes to The Railroad Credit Corporation are secured in part by the pledge and assignment of advances made by The Western Pacific Railroad Corporation to Standard Realty and Development Company and to Sacramento Northern Railway. These advances were pledged with and assigned to The Railroad Credit Corporation by The Western Pacific Railroad Corporation as accommodation collateral and are evidenced by a written instrument dated March 25, 1933. On January 1, 1939, the outstanding balance of the advances to [64] Standard Realty and Development Company so pledged with and assigned to The Railroad Credit Corporation amounted to \$110,000 principal; the outstanding balance of the advances to Sacramento Northern Railway amounted to \$856,260 principal, together with accrued unpaid interest from November 1, 1931.

10. Standard Realty and Development Company is a California corporation, all of the outstanding capital stock of which is now, and at all times mentioned in this petition, has been owned by the debtor. Standard Realty and Development Company is therefore a hundred percent owned subsidiary of Company is also indebted to the debtor for advances

on open account in the amount of \$363,310.86, and upon a demand note in the amount of \$251,273.07.

11. Sacramento Northern Railway is a California corporation, operating a railway connecting San Francisco and Oakland with various Sacramento Valley cities in the State of California. All of the outstanding capital stock of Sacramento Northern Railway is, and at all times mentioned in this petition, has been owned by the debtor. Sacramento Northern Railway is therefore a hundred percent owned subsidiary of the debtor and its railway lines are operated as an integral part of the interstate railway system of the debtor. In addition to its stock ownership, the debtor owns \$5,213,475 principal amount of the First Mortgage bonds of Sacramento Northern Railroad (liability upon which was assumed by Sacramento Northern Railway) being substantially all of the outstanding bonds of Sacramento Northern Railroad. Sacramento Northern Railway is also indebted to the debtor for advances for capital purposes evidenced by notes, in the amount of \$4,524,744.38 principal, and for advances on open [65] account in the amount of \$4,949,356.42 principal.

12. Since January 1, 1939, the effective date of the plan, The Western Pacific Railroad Corporation has received payment from Standard Realty and Development Company of \$42,500.00 principal and \$22,855.97 interest, on account of the advances to Standard Realty and Development Company. Of the sums so received, The Western Pacific Railroad Corporation has paid over to The Railroad Credit

Corporation \$17,500.00 principal and \$20,102.10 interest, said sums having been applied by The Railroad Credit Corporation in reduction of interest upon its note claim against the debtor. Further payments by Standard Realty and Development Company on account of such advances may be made prior to the issue of the new securities under the plan.

13. The Western Pacific Railroad Corporation claims that the securities to be allotted to The Railroad Credit Corporation (the amounts and number enumerated hereinbelow) under the plan constitute payment in full of The Railroad Credit Corporation's claim and that The Western Pacific Railroad Corporation is entitled to have returned to it by The Railroad Credit Corporation the original instrument pledging and assigning the advances made to Standard Realty and Development Company and Sacramento Northern Railway as part of the collateral securing the debtor's notes to The Railroad Credit Corporation. The Railroad Credit Corporation denies these contentions, its position being that the allotment of securities under the plan is predicated solely upon the collateral pledged by the debtor (said collateral consisting of \$4,000,000 of the debtor's General and Refunding Mortgage bonds) the amounts and number of said allotted securities being in proportion to the total amount of said General and Refunding Mortgage bonds outstanding. [66]

14. In its order of June 21, 1939, the Interstate

Commerce Commission refers to and makes a part of said order its supplemental report of the same date, in the following language:

“It further appearing, That the Commission upon reconsideration of the record herein in the light of the aforesaid argument, has, on the date hereof, made and filed its supplemental report containing its findings of fact and conclusions thereon with respect to the modifications of plan requested, and a full statement of the reasons therefor, which report is hereby referred to and made a part hereof:” (233 I.C.C. Rep. 441)

In its conclusions with respect to the allotment of securities, said supplemental report of the Commission states:

“Based upon our conclusion as to the relative priority, value, and equity of the various claims and the value of the new securities available in exchange therefor, we find that the new securities should be allotted as follows: (1) First-mortgage bondholders, \$19,716,040 of income-mortgage bonds, \$29,574,060 of preferred stock, and 230,593 shares of common stock, the common stock to be taken at the price of \$57 a share; (2) Finance Corporation, \$1,185,200 of income-mortgage bonds, \$1,777,800 of preferred stock, and 15,788 shares of common stock, the common stock to be taken at a price of \$57 a share; (3) Credit Corporation, \$154,111 of income-mortgage bonds, \$241,681 of

preferred stock, and 35,425 shares of common stock, the common stock to be taken at a price of \$62 a share, and (4) James Company, \$163,724 of income-mortgage bonds, \$256,756 of preferred stock, and 37,635 shares of common stock, being the amount of common stock which bears to the amount of common stock allotted to the claim of the Credit Corporation the same proportion that the principal amount of general and refunding bonds of the debtor held by the James Company as collateral for its claim bears to the principal amount of such bonds held by the Credit Corporation for its claim. We will modify our prior report and order accordingly." (233 I.C.C. Rep. 417)

In referring to that part of the bondholders committee's modified plan, which suggested that the modified plan provide that:

"* * * All collateral pledged by others than the debtor as security for the debtor's notes to the Finance Corporation, Credit Corporation, and James Company, would be surrendered to the pledgors thereof, and all collateral pledged by the debtor [67] as security for such notes would be reduced to possession by the respective pledges thereof, and would then be surrendered by them to the reorganized company and canceled, except that the Credit Corporation would not release or surrender any right or interest in the distributive shares of the debtor or its subsidiaries under the marshaling and

distributing plan, 1931, but any proceeds from such distributive shares after the effective date of the plan, would become the property of and be retained by the Credit Corporation, but to the extent to which received prior to the issue of the new securities under the plan would be applied in reduction of the claim of the Credit Corporation.” (233 I.C.C. Rep. 431, 432)

the Commission stated in its conclusion:

“We do not approve that part of the foregoing provisions which states that all collateral pledged by others than the debtor as security for the debtor’s notes to the Finance Corporation, Credit corporation, and James Company would be surrendered to the pledgors thereof. With this provision eliminated we approve the foregoing provisions. * * *” (233 I.C.C. Rep. 432)

15. The Supreme Court of the United States sustained the provision of Paragraph R of the Commission’s order of June 21, 1939 (hereinabove quoted) which directed the surrender and cancellation of collateral pledged by the debtor, but held that the Commission acted properly in refusing to direct the surrender of collateral pledged by others than the debtor. The opinion states with reference to such collateral:

“* * * None of the collateral, other than the refunding bonds, was a claim against the debtor. A. C. James Company and the Western Pacific Corporation perhaps had unsecured

claims against the debtor for their securities and other collateral which the debtor had borrowed but these were held worthless as claims against the debtor. 233 I.C.C. 452. This collateral, other than the refunding bonds, was therefore left with the pledges with its position unaffected by any direct action of the Commission.

“* * * Of course the collateral loaned to the debtor which was not an obligation of the debtor could not be ordered by the plan to be canceled. It remained with the pledgees. This ‘collateral pledged by the debtor’ was properly to be reduced to possession by the pledgees, surrendered and canceled. * * * The A. C. James Company unsecured [68] claim against the debtor for the loan of the bonds is valueless, 233 I.C.C. 452, and the plan does not deal with any possible claim of accommodation pledgors against pledgees of bonds which were not the property of the debtor.” (318 U.S. 448, 505, 506)

For the convenience of the Court there is appended hereto as Exhibit A that part of the opinion of the Supreme Court which deals with accommodation collateral.

16. The plan of reorganization contains no provision that payments received by The Railroad Credit Corporation after the effective date of the plan on account of the advances pledged with it by The Western Pacific Railroad Corporation, shall

be applied in reduction of the claim of The Railroad Credit Corporation or in reduction of the new securities allocated to The Railroad Credit Corporation under the plan, except in so far as such reduction in claim may be implied from the treatment accorded in the plan to similar payments received by The Railroad Credit Corporation under the marshaling and distributing plan of 1931 (see paragraph 5 above). The Railroad Credit Corporation has taken the position that it is entitled to retain all sums received by it after the effective date of the plan on account of such advances without incurring or suffering any reduction in the number or amounts of securities allocated to The Railroad Credit Corporation under paragraph 4 of subdivision P of the plan.

17. Standard Realty and Development Company and Sacramento Northern Railway are each subsidiaries of the debtor and essential elements in the debtor's railway system. In view of the substantial conflicting claims against these two subsidiaries of the debtor asserted by The Railroad Credit Corporation and The Western Pacific Railroad Corporation, your petitioners [69] submit that the Court should in this proceeding determine (a) the extent of the lien of The Railroad Credit Corporation upon these claims against such subsidiaries, (b) the extent to which payments heretofore received by Railroad Credit Corporation on account of such claims, after the effective date of the plan, may be retained by it, (c) the extent to which payments made to The Western Pacific Railroad Corporation

on account of such claims, after the effective date of the plan, but not paid over to Railroad Credit Corporation are rightfully due to Railroad Credit Corporation, and (d) whether any reduction should be made in the number and amounts of securities allocated to Railroad Credit Corporation under paragraph 4 of subdivision P of the plan by reason of such lien or payments.

IV.

18. In providing for the determination of available net income for each calendar year, subdivision L of the plan provides in part:

“L. Available net income shall be determined for each calendar year beginning with the year 1939, and continuing thereafter so long as any income-mortgage bonds remain outstanding. When no income-mortgage bonds remain outstanding, the provisions of this subdivision L shall cease to be operative.

“Available net income for each such calendar year shall be determined by deducting all fixed charges of the reorganized company and its wholly owned railway subsidiaries accrued during such calendar year from the consolidated income of the reorganized company and its wholly owned railway subsidiaries available for fixed charges for such calendar year, determined in accordance with the accounting rules of this Commission or other analogous Federal authority having jurisdiction in the premises at the time in force, or, to the extent not gov-

erned by such accounting rules, in accordance with sound accounting practice; provided, however, that if the reorganized company shall not come into ownership and possession of the properties now operated by the bankruptcy trustees on or before January 1, 1939, available net income for any period [70] after January 1, 1939, until the reorganized company comes into ownership and possession of such properties shall be computed as if the reorganized company had come into such ownership and possession on January 1, 1939, and had issued, as of that date, the new securities issuable under the plan, other than the \$10,000,000 of new first-mortgage bonds, series A, and in lieu of interest on such bonds there shall be charged the amount of interest actually accruing during such period upon any then outstanding trustees' certificates or other obligations issued to provide funds for rehabilitation purposes.

“Available net income shall be ascertained for each such calendar year as the accounts shall be stated on the books of the reorganized company during such calendar year, without adjustments, except * * * (3) debits or credits to adjust income in prior years shall be treated as income items for the year in which entered on the books, whether cleared through income or profit and loss accounts, so far, but only so far, as such debits and credits reflect cash receipts or disbursements in the year in which

they are entered on the books.” (233 I.C.C. Rep. 447) (Emphasis supplied)

19. While the second paragraph of subdivision L quoted above requires the inclusion of the income and fixed charges of “wholly owned railway subsidiaries” of the debtor and of the reorganized company in the determination of available net income for each calendar year beginning with the year 1939, it does not require the inclusion in such determination of the income and fixed charges of any railway subsidiaries of the debtor or of the reorganized company other than “wholly owned railway subsidiaries”. The debtor corporation now owns, and at all times since December 31, 1938 has owned, \$1,147,968 par value of the outstanding capital stock of Tidewater Southern Railway Company being approximately 97.97% of the total amount of stock outstanding; Standard Realty and Development Company, wholly owned subsidiary of the debtor, has acquired from the public since the commencement of the proceedings for the reorganization of the [71] debtor, and now owns, \$15,069 par value of said capital stock; and \$8,769 thereof is now owned by the public. It appears, however, from the reports of the Commission in this matter that the Commission intended that the income and fixed charges of Tidewater Southern Railway Company should be included in the determination of available net income of the reorganized company. Both in its report dated October 10, 1938 and in its report dated June 21, 1939 in this proceeding the Commission discussed the reported consolidated net

income of the debtor's system available for interest, and estimates of such consolidated income for future years and determined the capitalization authorized in the plan in relation to such data. In fact, the reported consolidated net income of the debtor's system and estimates of such income for future years included the income of its wholly owned railway subsidiaries and the income of Tidewater Southern Railway Company.

20. Petitioners submit to the Court that the requirements of the second paragraph of subdivision L of the plan, that the income and fixed charges of only the "wholly owned railway subsidiaries" of the debtor and of the reorganized company shall be included in the determination of available net income for any year presents a defect and inconsistency in the plan which should be cured and reconciled by the Court, and to this end that the Court should interpret the term "wholly owned railway subsidiaries" of the debtor as including Tidewater Southern Railway Company, and "wholly owned railway subsidiaries" of the reorganized company as including any railway corporation substantially all (i.e., 95% or more) of the stock of which shall be owned by the reorganized company. [72]

21. The accounts of the debtor company have been and necessarily will continue to be kept on an accrual basis; and it has been and will be necessary to make in every year adjustments of accounting performed in prior years and to include in the accounts for each year final entries in respect of

items previously set up as estimates or against contingencies. The failure to treat as income items all such adjustments, whether debits or credits, except such as reflect cash receipts or disbursements in the year in which they are entered on the books, would result in many items never being included in the determination of a net income for any year. Petitioners are advised and believe that the provisions of clause (3) of the third paragraph of subdivision L of the plan quoted above constitute a defect in the plan which should be cured by the Court under the provisions of subdivision V of the plan. Petitioners propose that the aforesaid defect in the plan should be cured by revising such provisions of clause (3) so that said clause will provide:

“* * * (3) debits or credits to adjust income in prior years shall be treated as income items for the year in which entered on the books, whether cleared through income or profit and loss accounts.”

Wherefore, your petitioners pray for an order of this Court:

(a) Construing the provisions of the plan of reorganization which are set forth in paragraph 3 hereof and authorizing and directing petitioners, as the Reorganization Committee under the plan, to provide for the issuance of 4.67 shares of new common stock in payment of accrued and unpaid interest, to January 1, 1939, of \$266.66 $\frac{2}{3}$ on each \$1,000 principal amount of First Mortgage bonds;

(b) Construing the provisions of the plan of reorganization of the debtor which are set forth in paragraph 5 hereof, reconciling the inconsistencies and curing the defects pointed out in paragraphs 6 to 17 hereof, and instructing petitioners, as such Reorganization Committee, as to the number and face amounts of new securities to be issued to The Railroad Credit Corporation under subdivisions P and R of the plan;

(c) Determining the extent of the lien of The Railroad Credit Corporation upon the claims against Standard Realty and Development Company and Sacramento Northern Railway referred to in paragraph 9 hereof and the rights of The Railroad Credit Corporation in respect of the payments referred to in paragraph 12 hereof;

(d) Curing the defect referred to in paragraphs 19 and 20 hereof, pursuant to the proposal of petitioners in paragraph 20 hereof;

(e) Curing the defect referred to in paragraph 21 hereof, pursuant to the proposal of petitioners in said paragraph and

(f) Granting such other and further relief as may be proper in the premises.

Respectfully submitted,

WHITMAN, RANSOM, COUL-
SON & GOETZ

Counsel for Petitioners

State of New York

County of New York—ss.

Robert E. Coulson, being first duly sworn, deposes and says:

That he is a member of the Reorganization Committee of The Western Pacific Railroad Company; that he has read the foregoing petition and knows the contents thereof and the same is true of his own knowledge, except as to the matters which are therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

ROBERT E. COULSON

Subscribed and sworn to before me this 5th day of May, 1944.

[Notarial Seal]

BEATRICE C. CUNNINGHAM

Notary Public, New York
County

N. Y. Co. Clk's No. 212 Reg. No. 425C6

Kings Co. Clk's No. 173 Reg. No. 319C6

Bronx Co. Clk's No. 38 Reg. No. 140C6

Queens Co. Clk's No. 757 Reg. No. 209C6

Certificate filed in Richmond County

Commission Expires March 30, 1946 [75]

EXHIBIT A

Accommodation Collateral. The debtor, The Western Pacific Railroad Company, objects to the provision of subdivision R of the Commission's final order, approved by the District Court, directing that

"All collateral pledged by the debtor as security for notes to the Reconstruction Finance Corporation, the Railroad Credit Corporation, and the A. C. James Company shall be reduced to possession by the respective pledgees thereof, and shall be by them surrendered to the reorganized company and canceled, . . ." 233 I.C.C. 453; 34 F. Supp. 493, 505.

This order arises from the following circumstances. As is shown on page 455, *infra*, the Reconstruction Finance Corporation, the Railroad Credit Corporation and A. C. James Company have notes of the debtor secured by pledges by the debtor of various amounts of the debtor's General and Refunding bonds and other collateral.

To assist the debtor in obtaining the Reconstruction Finance Corporation and Railroad Credit Corporation loans, the A. C. James Company furnished to the debtor's block of refunding bonds, previously issued to A. C. James Company by the debtor, and Western Pacific Corporation furnished to the debtor other collateral described in the Commission finding. These securities were a part of those then pledged by the debtor to secure the notes held by Railroad Credit Corporation and Reconstruction Finance Corporation, which knew the source of the collateral at the time.

The debtor's objection to the Commission's order is stated by it as follows:

"In substance, the Commission provided that the collateral owned and pledged by the Debtor should be surrendered to the reorganized Company but that the accommodation collateral borrowed from others and pledged by the Debtor should be confiscated; or, to state the proposal somewhat differently, the accommodation collateral is to be resorted to first instead of last as is required by the most elemental principles of equity and by the authorities cited below."

We think, however, that the objection is not sound and that the Commission's order is correct. These are our reasons: The refunding bonds pledged by the debtor to secure the A. C. James Company note and left in that position throughout were pledged directly by the debtor and are not accommodation collateral in any sense. Nor do we need give consideration to the accommodation collateral behind the Reconstruction Finance Corporation and Railroad Credit Corporation notes other than the refunding bonds. In the earlier order approving the plan, the Commission provided that the rights of the Reconstruction Finance Corporation and Railroad Credit Corporation "in collateral pledged with them by parties other than the debtor" should not be disturbed or altered. 230 I.C.C. 102; subdivision 0 of the order of October 10, 1938, *id.* 114. On consideration of the petitions for modification [76] of this order, the Commission refused to direct that this collateral be "sur-

rendered to the pledgors thereof.” 233 I.C.C. 431, 432. In its order, however, promulgating the present plan there is no clause comparable to subdivision O of the previous order preserving the rights of Reconstruction Finance Corporation and Railroad Credit Corporation in the collateral pledged with them by “parties other than the debtor.” The sole provision in the final order as to the collateral behind the Reconstruction Finance Corporation and Railroad Credit Corporation is that found in subdivision R and quoted at the opening of this section of this opinion, directing the collateral pledged by the debtor with Reconstruction Finance Corporation, Railroad Credit Corporation and A. C. James Company, be reduced to possession, surrendered to the reorganized company and canceled. This was entirely proper. None of the collateral, other than the refunding bonds, was a claim against the debtor. A. C. James Company and the Western Pacific Corporation perhaps had unsecured claims against the debtor for their securities and other collateral which the debtor had borrowed but these were held worthless as claims against the debtor. 233 I.C.C. 452. This collateral, other than the refunding bonds, was therefore left with the pledgees with its position unaffected by any direct action of the Commission.

The “collateral pledged by the debtor” referred to in the excerpt from subdivision R of the Commission’s final order, 233 I.C.C. 453, quoted above, can be only the general and refunding bonds of

the debtor, including those previously furnished by A. C. James Company. The words used in subdivision R to describe them are the same used by the Commission in distinguishing the refunding bonds from the remainder of the accommodation collateral. 233 I.C.C. 431, 432. Of course the collateral loaned to the debtor which was not an obligation of the debtor could not be ordered by the plan to be canceled. It remained with the pledgees. This "collateral pledged by the debtor" was properly to be reduced to possession by the pledgees, surrendered and canceled. For these bonds, furnished by A. C. James Company, held as collateral with other bonds of the debtor, the Reconstruction Finance Corporation and Railroad Credit Corporation received their allotment of new securities, 230 I. C. C. 101, as modified by the Reconstruction Finance Corporation arrangement, described in this opinion at page 485. See 233 I.C.C. 414, 452. The A. C. James Company unsecured claim against the debtor for the loan of the bonds is valueless, 233 I.C.C. 452, and the plan does not deal with any possible claim of accommodation pledgors against pledgees of bonds which were not the property of the debtor.

[Endorsed): Filed May 9, 1944. [77]

[Title of District Court and Cause.]

No. 26591-S

ORDER PROVIDING FOR HEARING UPON
PETITION OF REORGANIZATION COM-
MITTEE FOR AN ORDER CONSTRUING
PLAN OF REORGANIZATION IN VARI-
OUS RESPECTS AND RECONCILING IN-
CONSISTENCIES THEREIN

Upon due consideration of the petition of Fred-
erick H. Ecker, Frank C. Wright and Robert E.
Coulson, the duly constituted Reorganization Com-
mittee designated to carry out the plan of reorgan-
ization of the debtor above named, for an order
construing the plan of reorganization in various
respects and reconciling inconsistencies therein,

It Is Hereby Ordered as follows: [78]

1. That said petition be and it hereby is set
for hearing before this Court on June 2, 1944 at
10 o'clock, A. M.

2. That said Reorganization Committee be and
they hereby are directed to give notice of the said
hearing substantially in the following form:

LEGAL NOTICE

In the District Court of the United States for the
Northern District of California, Southern Division

No. 26591-S

In the Matter of
THE WESTERN PACIFIC RAILROAD COMPANY,

Debtor.

NOTICE OF HEARING UPON PETITION OF
REORGANIZATION COMMITTEE FOR
AN ORDER CONSTRUING PLAN OF RE-
ORGANIZATION IN VARIOUS RE-
SPECTS AND RECONCILING INCONSIS-
TENCIES THEREIN

Notice Is Hereby Given, pursuant to the order of the above named Court, that a hearing will be held before the Honorable A. F. St. Sure, Judge of the above entitled court, at the Court Room of the said Judge, in the United States Post Office and Court House Building, Seventh and Mission Streets, in the City and County of San Francisco, State of California, on June 2, 1944, at 10 o'clock, A. M., upon the petition of Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, the duly constituted Reorganization Committee designated to carry out the plan of reorganization of the debtor above named, for an order construing the plan of

reorganization in various respects and reconciling inconsistencies therein.

WHITMAN, RANSOM, COUL-
SON & GOETZ,

Counsel for the Reorganization Committee of The
Western Pacific Railroad Company

3. That the said notice be given by mailing prior to the 20th day of May, 1944, a copy of this order and a copy of said petition to the following parties:

1. Crocker First National Bank of San Francisco and Samuel Armstrong. [79]

2. Irving Trust Company.

3. A. C. James Co.

4. Reconstruction Finance Corporation.

5. The Railroad Credit Corporation.

6. The Chase National Bank of the City of New York.

7. The Western Pacific Railroad Corporation.

8. The Western Pacific Railroad Company.

9. The Western Realty Company.

10. Central Hanover Bank & Trust Company.

11. Allan P. Matthew, as counsel for the Reorganization Trustees.

12. The Institutional Bondholders Committee.

Dated, May 9, 1944.

A. F. ST. SURE
Judge.

[Endorsed]: Filed May 9, 1944.

[Title of District Court and Cause.]

No. 26591-S

APPEARANCE

To the Clerk of the Above-Entitled Court:

Please enter my appearance as one of the attorneys for The Railroad Credit Corporation in the above-entitled matter, in association with Edward G. Buckland, Esq., and William J. Kane, Esq., my address is #333 Montgomery Street, San Francisco, 4, California, telephone: YUkon 1977.

ARTHUR B. DUNNE

[Endorsed]: Filed Jun. 5, 1944.

[Title of District Court and Cause.]

No. 26591-S

CORRECTED MEMORANDUM OPINION AND ORDER CONSTRUING PLAN OF REORGANIZATION

The Reorganization Committee seeks an order construing the plan of reorganization. Section V of the plan provides that "The Court may cure any defect, supply any omission, or reconcile any inconsistency in such manner or to such extent as may be necessary or expedient in order to carry out the plan effectively."

A. No objection is made to, and Division 4 of the Interstate Commerce Commission approves the proposals of the Committee for a construction of the plan in the following respects:

1. In its report of June 21, 1939, the Interstate

Commerce Commission stated as to the allotment of new securities to First Mortgage bondholders:

“Based upon our conclusion as to the relative priority, value, and equity of the various claims and the value of the new securities available in exchange therefor, we find that the new securities should be allotted as follows: (1) First-Mortgage bondholders, \$19,716,040 of income-mortgage bonds, [82] \$29,574,060 of preferred stock, and 230,593 shares of common stock, the common stock to be taken at the price of \$57 a share; * * *” (233 I.C.C. Rep. 417.)

Paragraph 2 of subdivision P of the plan provides:

“Holders of existing first-mortgage bonds shall receive for each \$1,000, principal amount thereof, together with \$266.66 $\frac{2}{3}$ of interest accrued and unpaid thereon to January 1, 1939, approximately \$400 of income-mortgage $4\frac{1}{2}$ -percent bonds, series A, being 40 percent of the principal amount of said existing bonds; \$600 of 5-percent preferred stock, series A, being 60 percent of the principal amount of said bonds; and 4.67 shares of common stock, being common stock taken at the price of \$57 a share for 100 percent of said accrued and unpaid interest.” (233 I.C.C. Rep. 451)

Petitioners allege that the issue of 4.67 shares of common stock at the price of \$57 a share would not equal the exact amount stated of \$266.66 $\frac{2}{3}$ as the accrued and unpaid interest to January 1, 1939, on \$1,000 principal amount of first mort-

gage bonds; nor would the issue of common stock at the rate of 4.67 shares in respect of the accrued and unpaid interest on each \$1,000 principal amount of existing First Mortgage bonds result in an aggregate issue of 230,593 shares of common stock in respect of the aggregate of accrued and unpaid interest to January 1, 1939, upon all outstanding First Mortgage bonds.

The proposal of the petitioners that there be issued 4.67 shares of common stock in respect of all accrued and unpaid interest to January 1, 1939, in the amount of 266.66 $\frac{2}{3}$ on each \$1,000 principal amount of First Mortgage bonds, resulting in an aggregate issue under the plan of 230,184.767 shares of common stock in respect of the aggregate of accrued and unpaid interest to January 1, 1939, upon all First Mortgage bonds, is approved. [83]

2. Petitioners allege that the requirements of the second paragraph of Subdivision L of the plan, that the income and fixed charges of only the "wholly owned railway subsidiaries" of the debtor and the reorganized company shall be included in the determination of available net income for any year, presents a defect and inconsistency in the plan, and that the court should interpret the term "wholly owned railway subsidiary" of the debtor as including Tidewater Southern Railway Company (97.97% of the stock of that company being owned by the debtor), and also any railway corporation substantially all (95% or more) of the stock of which shall be owned by the reorganized company. The proposal is approved.

3. Subdivision L of the plan provides in part “* * * (3) debits or credits to adjust income in prior years shall be treated as income items for the year in which entered on the books, whether cleared through income or profit and loss accounts, so far, but only so far, as such debits and credits reflect cash receipts or disbursements in the year in which they are entered on the books.”

Petitioners allege that accounts have been and will be kept on an accrual basis, and that it will be necessary to adjust each year in respect to items set up as estimates or against contingencies; and that the language underlined above would prevent this adjustment. Petitioners propose that clause (3) be revised to provide “* * * (3) debits or credits to adjust income in prior years shall be treated as income items for the year in which entered on the books, whether cleared through income or profit and loss accounts.” The proposal is approved. [84]

B. Two contested questions are presented by the petition with regard to the claim of the Railroad Credit Corporation against the debtor. The Interstate Commerce Commission has made no recommendation with regard thereto, and has stated that these are matters to be determined by the court.

1. Paragraphs 4 and 5 of subdivision P of the plan provide:

“4. The Railroad Credit Corporation shall receive in respect of its claim in the principal amount of \$2,455,610 together with \$146,503 of interest accrued and unpaid thereon to January

1, 1939, subject to the reduction of said amounts by the application, prior to the date of issue of the new securities under the plan, of any proceeds from the distributive shares of the company or its subsidiaries under the marshaling and distributing plan, 1931, approximately \$154,111 of income-mortgage 4-1/2 percent bonds, series A; \$241,681 of 5-percent preferred stock, series A; and 35,425 shares of common stock, being common stock taken at the price of \$62 per share. The Railroad Credit Corporation's equity in the collateral securing the claim of the Reconstruction Finance Corporation is found to be without value." (233 I.C.C. Rep. 452)

"5. The A. C. James Company shall receive in respect of its claim in the principal amount of \$4,999,800, together with \$1,249,950 of interest accrued and unpaid thereon to January 1, 1939, \$163,724 of income-mortgage 4 1/2-percent bonds, series A; \$256,756 of 5-percent preferred stock, series A; and 37,635 shares of common stock, being an amount of common stock which bears to the amount of common stock allotted to the claim of the Railroad Credit Corporation the same proportion that the principal amount of general and refunding mortgage bonds of the debtor held by the A. C. James Company as collateral for said claim, bears to the principal amount of such bonds held by the Railroad Credit Corporation as collateral for its claim." (233 I.C.C. Rep. 452)

Subdivision R of the plan provides in part:

“* * * All collateral pledged by the debtor as security for notes to the Reconstruction Finance Corporation, the Railroad Credit Corporation, and the A. C. James Company shall be reduced to possession by [85] the respective pledgees thereof, and shall be surrendered by them to the reorganized company and canceled, except that the Railroad Credit Corporation shall not release or surrender any right or interest in the distributive shares of the debtor or its subsidiaries under the marshaling and distributing plan, 1931, but any proceeds from such distributive shares after the effective date of the plan shall become the property of and be retained by the Railroad Credit Corporation, but to the extent to which received prior to the issue of the new securities under the plan shall be applied in reduction of the claim of the Railroad Credit Corporation in respect of which such new securities are to be issued at the rates provided in subdivision P. * * *”
(233 I.C.C. Rep. 453)

The Railroad Credit Corporation has received since January 1, 1939, the effective date of the plan, proceeds from the distributive shares of the debtor and its subsidiaries under the marshaling and distributing plan of 1931 \$26,091.72, and may receive further proceeds prior to the issue of the new securities under the plan.

Petitioners contend that the amount of secur-

ities to be allocated to the Railroad Credit Corporation under paragraph 4 of subdivision P should be reduced by the proceeds of these distributive shares received or to be received by it prior to the issue of the new securities.

The Railroad Credit Corporation claims that while these payments will reduce the amount of its claim, that it is entitled to all securities allotted to it under paragraph 4 of subdivision P, on the ground that the new securities are based on the amount of general and refunding mortgage bonds held by it as collateral for its claim, and not on the amount of its claim; and further, that the market value of the new securities is totally insufficient to satisfy the claim. [86]

This court, in its opinion approving the reorganization plan, (*In re. Western Pac. R. Co.*, 34 F. Supp. 493, 498) said:

“RCC and ACJ are allotted new securities on the following basis: From the new securities, which the Commission finds are properly issuable in respect of the refunding mortgage bonds held as collateral for the RFC, RCC, and ACJ notes, are deducted that proportion of each class which the principal amount of refunding mortgage bonds held by RFC as collateral bears to the total amount of pledged refunding mortgage bonds. The balance of such new securities is then divided between RCC and ACJ in proportion to the principal amounts of refunding mortgage bonds held by them respectively as collateral. * * *”

In its approval of the plan issued October 10, 1938 (later modified in other respects) the intention of the Interstate Commerce Commission is shown: "The value of each of the claims is proportionate to the collateral securing it, and we find that the allotment of the stock should be made on the basis of the collateral held rather than on the amount of the claims."

There is no doubt that the allotments were made on the basis contended for by the Railroad Credit Corporation. However, while the A. C. James Company is allotted on a total claim of \$6,249,750 new securities of the face value of only \$2,853,850, the Railroad Credit Corporation will receive on a total claim of \$2,602,113 new securities of the face value of approximately \$2,592,142. The fact that the value of the securities so closely approaches the amount of the claim of the Railroad Credit Corporation must have been the reason for the language used in paragraph 4 of subdivision P and in subdivision R. Otherwise it becomes mere surplusage. The Claim of the Railroad Credit Corporation would of course be reduced by payments received from [87] any source at any time, but only proceeds from the distributive shares received prior to the issuance of the new securities are mentioned as reducing its claim within the contemplation of the plan: "but to the extent to which received prior to the issue of any securities under the plan (the proceeds) shall be applied in reduction of the claim of the Railroad Credit Corporation in respect to which such new securities are to be issued

at the rates provided in subdivision P.” The use of the words “at the rates” rather than “in the amounts” further indicates the intention that the amount of securities as well as the claim is to be reduced by the amount of such proceeds. This intention also appears from the qualifying word “approximately” which appears before the description of the securities in paragraph 4 of subdivision P. In paragraph 5, describing the securities to be issued to the A. C. James Co., which had no interest in the distributive shares, this word is not used.

I conclude that the construction contended for by petitioners is proper.

2. The Western Pacific Railroad Corporation pledged and assigned advances made by it to Standard Realty and Development Company and to Sacramento Northern Railway, the wholly owned subsidiaries of the debtor, as partial security for the debt of the debtor to the Railroad Credit Corporation. Since January 1, 1939, the Western Pacific Railroad Corporation has received from Standard Realty \$42,500 principal and \$22,855.97 interest on account of these advances. Of these sums the Western Pacific Railroad Corporation has paid over to the Railroad Credit Corporation [88] \$17,500 principal and \$20,102.10 interest. Further payments will be made by Standard Development prior to the issue of the new securities under the plan.

Western Pacific Railroad Corporation claims that the new securities to be allotted to the Railroad Credit Corporation under the plan constitute payment in full of its claim, and that the pledge

agreement should be returned to the Western Pacific Railroad Corporation and cancelled.

The Railroad Credit Corporation claims that its rights under the pledge agreement are not affected by the issuance of the new securities to it; that the allotment of such securities is predicated solely upon the refunding mortgage bonds of the debtor which it held as security; and that it is entitled to proceed against the collateral so pledged in the event that the actual value of the new securities shall not equal the amount of its claim.

The plan is silent with regard to the pledged collateral, and the Supreme Court said (318 U. S. 448), “* * * Of course the collateral loaned to the debtor which was not an obligation of the debtor could not be ordered by the plan to be cancelled. It remained with the pledgees.”

The Western Pacific Railroad Corporation is attempting to do what the Supreme Court said could not be done by the plan. If the Railroad Credit Corporation were in the position of the A. C. James Co. and would receive securities of the face value of less than half the amount of its claim, it could not be contended that the acceptance of the most that could be allotted to it from the assets of the debtor under the plan would release any outside collateral which it might hold. It follows that if the market value [89] of the securities is much less than their face value, as contended by the Railroad Credit Corporation, and it will not be able to realize thereon enough to satisfy its claim, it is not made whole nevertheless by the allotment to it of securities of a face value approximating

the amount of its claim, as contended by the Western Pacific Railroad Corporation. As a junior claimant it has consented to accept from the debtor's estate as much as it has been found entitled to. There is no presumption that it has been made whole. It is fortunate enough to have outside collateral against which it can proceed if the estate of the debtor cannot satisfy the claim.

I conclude that the contention of the Railroad Credit Corporation should be sustained.

It is so ordered. Counsel for petitioners may submit decree accordingly.

Dated: June 21, 1944.

A. F. ST. SURE

United States District Judge

[Endorsed]: Filed Jun. 22, 1944. [90]

In the Southern Division of the United States District Court, in and for the Northern District of California

No. 26591-S

In the Matter of

THE WESTERN PACIFIC RAILROAD COMPANY,

Debtor.

Before: Hon. A. F. St. Sure, Judge.

HEARING ON PETITION FOR ORDER CON-
STRUING PLAN OF REORGANIZATION
IN VARIOUS RESPECTS AND RECON-
CILING INCONSISTENCIES THEREIN

Friday, June 2, 1944

Counsel Appearing:

For Reorganization Committee:

Messrs. Pillsbury, Madison & Sutro,

By Felix T. Smith, Esq.

Robert E. Coulson, Esq.

For Reorganization Trustees:

Allan P. Matthew, Esq.

Burnham Enersen, Esq.

For Railroad Credit Corporation:

Edward G. Buckland, Esq.

LeRoy R. Goodrich, Esq.

For Debtor:

Frank S. Nicodemus, Esq.

M. C. Sloss, Esq.

Stephen Duhring, Esq. [93]

[Title of District Court and Cause.]

No. 26591-S

REPORTER'S TRANSCRIPT

Mr. Matthew: If it please the Court, may we first take up the joint petition of the Reorganization Committee and the Reorganization Trustees for an order authorizing agreements with the Commissioner of Internal Revenue in respect to the establishment of depreciation accounting as to the road properties of the Western Pacific Company, and likewise two of its railway subsidiaries, the Tidewater Southern Railway and the Sacramento Northern Railway.

Notice of this hearing has been given as required by the order of the Court, and an affidavit to that effect is on file.

May I state to your Honor briefly that heretofore it has been the practice of the Western Pacific Railroad Company, in conformity with the conventional practice, to provide for depreciation in accordance with the so-called retirement method. That is, there has been retirement accounting, rather than depreciation accounting. Under that method there is no accumulation of depreciation reserve. There is no actual depreciation charged. Whenever a property is retired by reason of obsolescence or destruction the cost of the item is treated as an expense incurred at the time of the retirement. I am advised under this practice of retirement accounting the average charge for retirements for the five-year period extending from 1938 through 1942 was approximately \$133,000 per year, that is, for the debtor company alone.

Now, the Interstate Commerce Commission has recently made an order requiring all steam railroads to establish depreciation accounting for road properties. These instructions apply directly to the Western Pacific Railroad, and likewise to the Tidewater Southern Railroad Company. They do not apply directly to the Sacramento Northern Railway because that is not a steam [94] railroad property, but it is thought desirable, in order to standardize the accounts of the debtor and all its railroad subsidiaries to establish depreciation accounting for the Sacramento Northern Railroad, as well as for the Tidewater Southern Railroad and the Western Pacific.

For sometime past there have been negotiations with the Commissioner of Internal Revenue, looking toward an agreement in which this change from retirement accounting to depreciation accounting shall take place in a manner acceptable to the Bureau of Internal Revenue. That is, of course, for tax purposes. The request of those negotiations is set forth in a letter from the Commissioner to the Western Pacific Railroad Company, dated April 27, 1944, a copy of that letter being annexed to this petition as Exhibit A.

That letter sets forth certain schedules in detail, with the suggested annual depreciation rates which are acceptable to the Commissioner, and it is contemplated that the depreciation accounting shall become effective commencing with January 1, 1943. The letter of the Commissioner also sets forth certain conditions which are to be observed, and a letter accepting those conditions must be filed with

the Commissioner on or before June 15th. There must be a letter for each of the properties, for the Western Pacific, for the Tidewater Southern, and for the Sacramento Northern.

The Reorganization Committee, as I have stated, has joined with the Reorganization Trustees in this petition. The petitioners feel that it is to the best interests to the estate of the Debtor to accept the terms and conditions imposed by the Commissioner of Internal Revenue in his letter of April 27th. I shall state to the court that it is estimated that the annual [95] charge for depreciation of road properties of the Debtor alone will be in the neighborhood of \$400,000, or approximately three times the annual charges heretofore permitted under the retirement method. These increased deductions will, of course, bring about a proportionate reduction in income and excess profit taxes.

I think I need not comment on the conditions imposed by the Commissioner in his letter. They seem acceptable. I think at this point I would like to call Mr. Elsey briefly for testimony.

The Court: Very well.

CHARLES ELSEY,

called as a witness on behalf of petitioners; sworn.

Direct Examination

Mr. Matthew: Q. Mr. Elsey, are you familiar with the subject matter of this petition contemplating the change from retirement accounting to depreciation accounting?

A. Yes, sir.

(Testimony of Charles Elsey.)

Q. Are you familiar with the letter of the Commissioner of Internal Revenue dated April 27, 1944? A. Yes.

Q. In which certain conditions are set forth?

A. Yes, sir.

Q. Will you state briefly, please, the reasons for this proposed change from retirement accounting to depreciation accounting?

A. The Western Pacific and the Tidewater Southern are required to change from retirement to depreciation accounting, and it is my belief that the Sacramento Northern should do likewise, so that the accounting practices on our three properties should be on a uniform basis. The change over from one accounting practice to another will bring up quite a number of tax problems, and it is my belief that we should settle as many [96] of these problems by entering into this agreement with the Commissioner of Internal Revenue in advance so that we will be able to compute our taxes more accurately, and also do away with this countless controversy, as far as depreciation rates in the future are concerned. Our tax counsel advises me that if we enter into this agreement with the Commissioner it will very materially reduce our income and excess profit taxes.

Q. Do you agree that this is the best arrangement that can be made at this time?

A. Yes, I do.

Q. Would it be in the interest of the estate of the debtor and likewise in the interest of the Tide-

(Testimony of Charles Elsey.)

water Southern and the Sacramento Northern that these agreements be made?

A. Very much so.

The Court: Is there any objection to the granting of this petition?

Mr. Smith: No, your Honor.

The Court: I suppose due notice has been given?

Mr. Matthew: Yes, your Honor. An affidavit to that effect is on file.

The Court: The petition is granted.

Mr. Smith: Your Honor, there is another petition on the calendar this morning, a petition by the Reorganization Committee, and I ask leave to file the affidavit of Henry G. Henn, showing the serving of the notice of this hearing. This petition is for the purpose of construing and reconciling various inconsistencies in the plan that has heretofore been approved by this Court for the reorganization of the railroad. Some of them are matters of detail that will not take a great deal of your Honor's time, but the chief questions relate to relations between this corporation and the debtor and certain subsidiaries, and for that [97] reason I should like to call Mr. Elsey to the stand, if you will, Mr. Elsey, and testify to those relationships.

CHARLES ELSEY,

called as a witness on behalf of petitioner; sworn.

Direct Examination

Mr. Smith: Q. Mr. Elsey, what is the Standard Realty & Development Company?

A. The Standard Realty & Development Company is a solely owned subsidiary of the Western Pacific Railroad, all of the stock being owned by the Western Pacific and deposited under the Western Pacific first mortgage.

Q. How about its indebtedness?

A. What is that?

Q. How about its indebtedness.

A. Practically all of its indebtedness is owed to the Western Pacific Railroad Company.

Q. Are you familiar with the allegations regarding the Standard Realty & Development Company's affairs set forth in subdivision 3 of this petition that is on file here?

A. Yes, sir.

Q. Are they correctly stated there?

A. Yes, sir.

Q. Can you explain this indebtedness of \$110,000 that is mentioned in that subdivision and give the Court the history of that indebtedness?

A. I can't hear.

Q. Can you give the Court the history of that indebtedness of \$110,000 which is there discussed?

A. Yes, sir.

Q. Please do so.

A. The Interstate Company, which operated a summer resort in the Feather River Canyon—its

(Testimony of Charles Elsey.)

facilities were burned down—and in order to rebuild them they wished to secure a loan of \$125,000. The Western Pacific Railroad Company could not make the loan, and it was then agreed that the Western Pacific Railroad Corporation should make the loan, but inasmuch as it did not wish to do business in California, it made the loan through [98] the Standard Realty & Development Company. The Standard Realty & Development Company to that extent is trustee for the Western Pacific Railway Corporation.

Q. And this \$110,000, as I understand it, is the balance unpaid on that indebtedness that was owed by the Interstate Company to the Standard Realty Company and in turn owed by Standard Realty & Development Company to Western Pacific Railroad Corporation? A. That is correct.

Q. And that was pledged by Western Pacific Railroad Company with the Railroad Credit Corporation? A. Yes, sir.

Q. What is the Sacramento Northern Railway?

A. The Sacramento Northern Railway is a railroad operating from Oakland through the Sacramento Valley, all of its stock being owned by the Western Pacific Railroad Company, and all of its first mortgage bonds, except participating certificates in the amount of \$188.38, are of a total outstanding of \$5,224,373.14. All of the stock and the bonds are owned by the Western Pacific Railroad Company and are pledged under the Western Pacific's first mortgage.

(Testimony of Charles Elsey.)

Q. What is the Tidewater Southern?

A. The Tidewater Southern is a steam railroad operating from Stockton down through the San Joaquin Valley to Turlock, and practically all of its stock is owned by the Western Pacific Railroad Company.

Q. The petition states the facts about that and gives the figure as 97.97 percent. Are the statements in the petition correct? A. Yes, sir.

Q. Is the Tidewater Southern generally treated as a wholly-owned railway subsidiary of the debtor?

A. Yes, sir.

Q. Do you consolidate those accounts in your accounting?

A. Well, under the plan of reorganization.

Mr. Smith: I think those are the only questions we want [99] to ask Mr. Elsey, but if there are any other counsel who want to ask him——

The Court: Does any counsel present wish to ask Mr. Elsey any questions? That is all, Mr. Elsey.

Mr. Smith: Mr. DeGrath.

D. C. DE GRATH

called as a witness on behalf of the petitioner;
sworn.

Direct Examination

Mr. Smith: Q. What is your name?

A. D. C. DeGrath.

Q. Where do you live, sir?

(Testimony of D. C. De Grath.)

A. San Francisco.

Q. What is your occupation?

A. I am General Auditor of the Western Pacific Railroad.

Q. Are you familiar with the petition that has been filed here by the Reorganization Committee?

A. Yes.

Q. In particular, I call your attention to the allegations regarding the Standard Realty & Development Company and the indebtedness that has been discussed by Mr. Elsey in his testimony. What are the present facts regarding that indebtedness? Has it been paid?

A. Paid? I don't quite understand your question. Paid by whom?

Q. By the Standard Realty & Development Company. Do you keep the books of the Standard Realty & Development Company?

A. Yes.

Q. Well, there was an indebtedness of \$110,000. Now, have there been any payments made on that account since January 1, 1939?

A. I don't get your question yet. This \$110,000——

Q. Yes.

A. I don't understand. You are talking about this Interstate——

Q. Yes, I am talking about the Interstate matter. A. The Interstate proposition? [100]

Q. Yes.

A. Well, the total amount of that Interstate

(Testimony of D. C. De Grath.)

obligation to the Standard Realty & Development Company has been paid.

Q. It has been paid? A. It has been paid.

Q. That is what I want to know, and to whom was that paid?

A. Paid to the Standard Realty & Development Company.

Q. And then what did the Standard Realty & Development Company do?

A. The Standard Realty & Development Company paid over all the money to the Western Pacific Railroad Corporation, except \$67,500 of the principal.

Q. How much of that payment was made since January 1, 1939. The petition states, Mr. DeGrath, that since January 1, 1939 there has been \$42,500 of the principal and \$22,855.97 of interest paid.

A. Well, there has been \$17,500 of the principal paid.

Q. By whom?

A. That is an error. There has been \$42,500 paid on the principal.

Q. That has been paid by Standard Realty & Development Company to Western Pacific Railroad Corporation? A. That is right.

Q. And how much interest?

A. And there has been \$22,855.97 interest paid.

Q. Do you know or have any information about what the Western Pacific Railroad Corporation has done with that money?

A. Well, we have been notified that \$17,500 of

(Testimony of D. C. De Grath.)

that principal has been paid to the Railroad Credit Corporation and \$20,102.10 of the interest.

Q. What is the balance of the other indebtedness of the Standard Realty & Development Company to Western Pacific Railroad Company, the debtor here?

A. On account of this particular transaction——

Q. No, this other indebtedness.

A. Well, the Western Pacific holds the Standard's note for \$251,000, and there is some \$300,000 advanced. [101]

Q. It is stated in the petition that the demand note is \$251,273.07; is that figure correct?

A. That is correct.

Q. It is stated in the petition that the open account is \$363,310.86, and I am informed that since then there has been a payment, so that that should be \$303,310.86.

A. That is correct.

Q. And those sums are owing by Standard Realty & Development Company to the debtor?

A. That is right.

Q. Now, it is alleged in the petition that the Sacramento Northern Railroad Company owes the debtor for advances on open account \$1,949,356.42; is that figure correct?

A. It is \$170,000 less than the figure shown in the petition.

Q. So that it should be \$1,749,356.42?

A. Correct.

Q. Do you know about an indebtedness of the Sacramento Northern Railway amounting to \$856,-

(Testimony of D. C. De Grath.)

260 to the Western Pacific Railroad Corporation?

A. That is the amount we are carrying on the Sacramento Northern Railway account as due the Western Pacific Corporation for advances.

Q. Do you know whether there have been any payments on that account?

A. There have not.

Q. Is that account represented by any instrument, note, or any other thing?

A. Not that I know of.

Q. How long has that account been there on the books?

A. That total amount, \$416,260, was advanced to the San Francisco-Sacramento Railroad Company, and that was assumed by the Sacramento Northern Railway at the time they purchased the San Francisco & Sacramento Railway, and the \$440,000 was advanced to the Sacramento Northern Railway; in May, 1928, \$200,000; June, 1928, \$120,000; December, 1928, \$120,000.

Q. And those were the last transactions in that account?

A. Yes, except interest on these advances at 5 percent per annum to and [102] including October 31, 1931.

Subsequent to that date accruals have been made in the accounts of the Sacramento Northern Railway for this interest, and the account so accrued is carried as a part of a non-negotiable debt to affiliated companies, but there has been nothing paid on that and no payments on the principal since October 31, 1931.

(Testimony of D. C. De Grath.)

Q. Has there been any waiver of the statute of limitations? A. I have never seen any.

Mr. Buckland: What was that last question?

Mr. Smith: I asked him if there had been any waiver of the statute of limitation on this indebtedness. That is all.

The Court: Any further questions of Mr. DeGrath?

Cross-Examination

Mr. Buckland: Your Honor, the assignment, of which I have here a photostatic copy, indicates that there were pledged, assigned to the Railway Credit Corporation by the Western Pacific Railroad Corporation the Standard Realty & Development Company obligation in the sum of \$120,000 for advances to said Standard Realty & Development Company.

Q. Is that in accord with your accounting, Mr. DeGrath?

A. I presume that is correct, at the time when that assignment was made.

Mr. Buckland: The difficulty I have is that in the petition for clarification you speak of \$110,000, and then you also speak of certain partial payments that have been made amounting to \$17,500, and it is not clear, to my mind, just what your testimony now amounts to with respect to the amount of principal and interest on that Standard Realty & Development Company claim, not speaking of the other for the time being.

(Testimony of D. C. De Grath.)

This, Mr. Smith, is a photostat of the original note. [103]

Q. What I am trying to find out from you, Mr. DeGrath, is what your account shows has been paid by the Standard Realty & Development Company, first on account of principal, reducing the principal amount, and, second, the accrued interest.

A. Well, on account of the principal—do you want the dates of these?

Q. Yes, please.

A. In February, 1940, there was \$3500. In July, 1941, \$3500. In August, 1941, \$3000.

Q. And all of those, as you are going on, were applied to principal in each case?

A. That is the payment on the principal of that Interstate Company's note received by the Standard and turned over to the Western Pacific Railroad Corporation.

Q. Please proceed with those payments.

A. In July, 1942, \$4000; January, 1943, \$3500; April, 1943, \$5000; June, 1943, \$20,000. That is a total of \$42,500 on account.

Q. All of that applied to principal?

A. All of that applied to principal.

Q. So that if so applied, it would reduce the amount of the original \$120,000 which was pledged to the Railroad Credit Corporation by \$42,500?

A. Yes.

Q. And there would not be the \$110,000 which is spoken of in the petition. Now, will you please let

(Testimony of D. C. De Grath.)

me know the dates of the credits of interest upon that principal sum?

A. In December, 1938, which was, by the way, paid after January 1, 1939, \$1247.67; in March, 1939, \$1,220.55; in June, 1939, \$1234.11; September, 1939, \$1,247.67; December, 1939, \$1247.67.

March, 1940, \$1210.95; June, 1940, \$1191.58; September, \$1204.67; December, 1940, \$1204.67.

March, 1941, \$1181.69; June, 1941, \$1194.84; September, 1941, \$1164.49; December, 1941, \$1134.46.

April, 1942, \$1109.59; June, 1942, \$1121.92; September, 1942, [104] \$1096.79; December, 1942, \$1088.88.

March, 1943, \$1026.37; June, 1943, \$968.12; September, 1943, \$759.38.

That made a total of \$22,855.97.

Q. That is what you have alleged in the petition?

A. Yes. Then a final interest payment received but not paid to the Western Pacific Corporation, and now held in the treasury of the Standard Realty & Development Company, December, 1943, final payment of interest \$567.12.

Q. For a time the payments that were made by the Standard Realty & Development Company, both on account of principal and on account of interest, came to the Railroad Credit Corporation; can you state how much of those payments that you have stated so came to the Railroad Credit Corporation? Have you any record of that?

A. We have been advised by the corporation that of that \$42,500 principal, \$17,500 has been paid

(Testimony of D. C. De Grath.)

to the Railroad Credit Corporation, and of the \$22,855.97 interest, \$20,102.10 has been paid to the Railroad Credit Corporation.

Q. The pledge of this obligation of the Standard Realty & Development Company was made by the Western Pacific Railroad Corporation; that is correct, is it not?

A. That is my understanding. I can't say positively about that, because I haven't anything to do with the accounts of the Western Pacific Railroad Corporation.

Q. But you do have to do with the accounts of the Standard Realty & Development Company?

A. Yes.

Q. Was the Standard Realty & Development Company advised of the assignment of that obligation as a pledge to the Railroad Credit Corporation?

A. I can't testify as to that.

Q. You know, however, that it had been so advised, did you not?

A. Yes. [105]

Q. Why, then, did the Standard Realty & Development Company not make payments direct to the pledgee of that obligation rather than through Western Pacific Railroad Corporation?

A. I can't answer that, except that we were doing business with the Railroad Corporation.

Q. But you knew that your obligation had been assigned and pledged to the Railroad Credit Corporation?

A. Yes.

Q. Then why weren't the payments made to the Railroad Credit Corporation instead of to the

(Testimony of D. C. De Grath.)

Western Pacific Railroad Corporation, which retained a part of them?

A. That never was called to my attention.

Q. It was called to your attention when demand was made upon you, was it not, by the Railroad Credit Corporation as to why further payments were not made?

A. I never saw a demand of that kind, myself.

Q. Then why did you stop paying, after you had paid \$17,500 to the Railroad Credit Corporation on account of principal and the other sum on account of interest, why did you stop paying to the Railroad Credit Corporation? Why was that stopped?

A. We never had any authority, so far as I was concerned, to pay any money to the Railroad Credit Corporation on this account. We did our business between the Standard and the Railroad Corporation.

Q. Even though the obligation had been assigned to somebody else who was entitled to payment?

A. Well, I never saw that assignment, myself.

Q. But you knew it had been made, did you not?

A. Yes, that is, I understand it had been.

Mr. Buckland: That is all.

Redirect Examination

Mr. Smith: Q. Let me get these figures straight, again. [106] What was the balance of this indebtedness of the Standard Realty & Development Company on January 1, 1939—principal?

A. I haven't those figures here.

(Testimony of D. C. De Grath.)

Q. You haven't those figures? A. No.

Q. You do know, however, there has been \$42,000 principal paid since that date? You have testified to those figures. A. Yes.

Q. \$42,500? A. Yes, that is correct.

Q. What is the unpaid balance of principal today? A. There is none.

Q. What happened to the difference? You said you were holding some interest, didn't you?

A. Yes.

Q. That is all.

A. No, we have \$67,500 of the principal money in the treasury of the Standard at the present time.

Q. That is what I am saying. You have \$67,500 of principal in the treasury of the Standard Realty & Development Company that that corporation owes to someone, and the discussion here is about to whom it shall pay the money, is that it?

A. That is it.

Q. All right. Now, \$67,500 will clean up the indebtedness when that is paid, is that right?

A. When that and that \$567.12 interest is paid.

Q. But so far as the principal is concerned, the \$67,500 is what you have now, and then there was \$42,500 paid since January 1, 1939?

A. That is right.

Q. Now, isn't it true that the balance of the principal on January 1, 1939, was \$110,000, the sum of those two figures? A. Yes.

Q. Mr. Buckland mentioned a figure of \$120,000. Do you understand that that was the balance

(Testimony of D. C. De Grath.)

of principal due on January 1, 1939, or that that was some earlier balance?

A. Well, I don't know. I am not sure what the \$120,000 means.

Q. You do not know where he got that figure?

A. No. [107]

Mr. Buckland: May I explain, for the information of the Court that the witness, I have here the original, or, rather, a photostat of the original assignment.

Mr. Smith: What is the date of that, Mr. Buckland?

Mr. Buckland: March 25, 1933, an assignment in the sum of \$120,000 for advances to the Standard Realty & Development Company. This is a pledge, Mr. Smith, that was made by the Western Pacific Railroad Corporation. What I am trying to do is to account for the difference between the \$110,000 that you mention in your petition, here, and this \$120,000 mentioned in the assignment, of which we have a photostat of the original.

Mr. Smith: Isn't that the fact, that \$120,000 was the balance as of the date, some date in March in 1933?

Mr. Buckland: But I have no testimony from this witness as to how that principal of \$120,000 was reduced to \$110,000, or any other figure.

Mr. Smith: That is just what I am trying to get from him.

Q. Mr. Buckland has a copy of an assignment dated in 1933 that states that the balance of the

(Testimony of D. C. De Grath.)

principal was \$120,000, while, according to your records on January 1, 1939 the balance of principal was \$110,000. Have you any record of payments made by Standard Realty & Development Company on account of the principal of this indebtedness between those dates?

A. Not with me, no. It is very likely that that \$10,000 difference was covered by payments made between the date of Mr. Buckland's figure and January 1, 1939, which reduced it \$10,000.

Mr. Smith: We shall be glad to have Mr. De-Grath obtain that information, possibly during the noon hour, and we can give it to Mr. Buckland so he will have the complete explanation of that. [108]

Mr. Buckland: I wish you would, and also if he would copy down those figures with references to payments of principal and interest to which he has just testified, we would appreciate it.

Mr. Smith: We will give you a statement. There is one other thing, your Honor:

Q. Do you know how much the Railroad Credit Corporation has received since January 1, 1939 under the Marshalling and Distributing Plan of 1931?

A. Those figures that are in the petition, there——

Q. Yes.

A. I checked those figures and they are correct.

Q. That figure is \$26,091.72.

A. That is right.

Mr. Smith: That is all.

Mr. Buckland: Just a moment. What figures were you referring to in your petition?

Mr. Smith: Page 5, line 45.

ROBERT E. COULSON,

called as a witness on behalf of Petitioner; sworn.

Direct Examination

Mr. Smith: Q. What is your name, Colonel?

A. Robert E. Coulson.

Q. Where do you live? A. New York.

Q. Are you a member of the Reorganization Committee appointed under this Plan of Reorganization of the Debtor by this Court? A. I am.

Q. Did you supervise the preparation of the petition that is on file here today? A. Yes.

Q. And you are familiar with its contents?

A. Familiar with it.

Q. And they are correct? A. Yes.

Q. In connection with the matters discussed in that petition, I [109] show you a letter. Did you receive that letter? A. I did.

Mr. Smith: I will offer in evidence, your Honor, a letter from Mr. Claude R. Porter, of the Interstate Commerce Commission, addressed to Mr. Coulson, dated May 2, 1944, relating to various matters concerned in this petition.

The Court: Admitted.

(The document was marked Reorganization Committee's Exhibit 1 in evidence.)

Mr. Smith: If your Honor please, I think I should go through these different points that are

(Testimony of Robert E. Coulson.)

discussed by Mr. Porter and get Mr. Coulson's testimony at greater length on that point. The first point discussed relates to the amount of common stock that is to be paid to the First Mortgage Bondholders. The plan says in one place that there is to be 4.67 of a share of common stock to a thousand dollar bondholder in payment of \$266.66 $\frac{2}{3}$ as accrued interest. And then there is another figure giving the aggregate number of shares of common stock to be issued on this account.

Q. When you multiply them out do they come into accord?

A. They do not. There is a difference owing to the decimal point not being carried out indefinitely, I think.

Q. Our view is a specific statement of the plan which says they are to get 4.67 of a share for each \$1000 bond shall prevail over the statement of the aggregate, and that is your view, Colonel Coulson?

A. That is correct.

Q. And that is the view of the Interstate Commerce Commission.

The second point relates to the claim of the Railroad Credit Corporation. The Railroad Credit Corporation had certain security from the debtor, including the Marshalling and Distributing Plan, and certain other security that we shall discuss here- [110] after, and under the Marshalling and Distributing Plan, as is shown in the testimony, the Railroad Credit Corporation since the effective date of the plan, January 1, 1939, has received \$26,091.72.

(Testimony of Robert E. Coulson.)

The plan says, "Receipts of this kind are to be applied in reduction of the claim of the Railroad Credit Corporation."

Despite that, the Railroad Credit Corporation has made the suggestion that while its claim should be reduced, the amount of securities it gets from the reorganized corporation shall not be reduced.

Is that a statement of—

A. That is correct.

Q. And what is the view of the Reorganization Committee in that regard?

A. The Reorganization Committee had the view that the plan quite clearly contemplated the reduction of the amount of securities to go to the Railroad Credit Corporation on account of any credits which it applied from the Marshalling-Refunding Plan between the effective date and the date of the consummation of the plan.

Mr. Smith: It is that point, your Honor—and I will advert to our exhibit—that the Commission says the language of the plan is ambiguous and the matter should be construed by the court on the basis of the court's views as to the rights of the parties. We have outlined our view, which is the reduction of the amount of the claim of the Railroad Credit Corporation, necessarily involves a reduction of the amount of securities that the Railroad Credit Corporation is to receive. And I assume that in due course Mr. Buckland will express his views in that respect.

Another point relates to this indebtedness of the

(Testimony of Robert E. Coulson.)

Standard Realty & Development Company that was assigned by the Western Pacific Railroad Corporation, the holding company, as collateral [111] security for the indebtedness of the debtor held by the Railroad Credit Corporation, and in that connection the dispute, as we understand it, must be between the Western Pacific Railroad Corporation, a holding company, and the Railroad Credit Corporation, because the question is, Who ought to have that money? Some of it is now in the hands of the Standard Realty & Development Corporation. We do not know to whom to pay it. Some of it has been paid to the Western Pacific Railroad Corporation, the holding company, and some of it has been paid over by the Western Pacific Railroad Corporation to the Railroad Credit Corporation, and, of course, that reduced the amount of the claim of the Railroad Credit Corporation in this reorganization. Nevertheless, we are issuing or we are planning to issue the full amount of securities undiminished by that reduction, and there are conflicting claims between those two people regarding the effect of this indebtedness and the payment of the proceeds of the——

Mr. Sloss: May I interrupt a moment, your Honor? Perhaps to shorten matters. I appear here for the Western Pacific Railroad Corporation, which pledged this Standard Company stock which it owned as additional security to the Railroad Credit Corporation. Our position here is that the disposition of that stock and the proceeds thereof is

(Testimony of Robert E. Coulson.)

not involved in the plan, and is not a matter that is within the jurisdiction of your Honor on this hearing, but should be determined by independent litigation between the two parties involved, namely, the Western Pacific Railroad Corporation and the Railroad Credit Corporation. I would like to be heard on that briefly whenever it is convenient to your Honor during the course of the day.

Mr. Buckland: Just a moment. There has been introduced in evidence a petition of ours, offered here and filed by the Court [112] containing a motion by the Railroad Credit Corporation to dismiss that proceeding, and for summary judgment upon the face of the pleadings in that case, and if these priorities must be disposed of, the time has come perhaps to discuss that. I do not want to interrupt this orderly presentation of the case, here, but obviously a petition in equity between the Western Pacific Railroad Corporation and the Railroad Credit Corporation, which is now in this court, accompanied by a motion to dismiss and a motion for summary judgment on account of the pendency of a prior suit which you are now discussing, is a matter which should be disposed of in chronological order. With that understanding I think perhaps it might be just as well for all of them to go together, because the priority of the matters has been disturbed by having brought to your Honor's notice the situation as it is.

The Court: I notice a complaint has been filed by the Western Pacific Railroad Corporation, and I

(Testimony of Robert E. Coulson.)

thought when I glanced at it that it would be taken up as you suggest and considered with these other matters that are now being presented to the Court.

Mr. Buckland: But instead of answering, I filed a motion to dismiss on account of the pendency of a prior suit.

The Court: If you wish, I can hear argument on that when Mr. Smith has finished, or at any time that will suit your convenience. I presume any of these matters which are now being brought out in evidence would apply to the ruling of the Court on that complaint.

Mr. Buckland: They are all quite pertinent and quite relevant, and if we just bear in mind that the relative priorities of those matters which would have to be disposed of, I think we can go along just as we are.

The Court: All right. [113]

Mr. Smith: Q. There is also the indebtedness of the Sacramento Northern, some \$800,000. None of that has been paid. But those are in the same situation and present the same questions, do they not, Colonel Coulson?

A. From the standpoint of the reorganization there is a substantial difference between the Sacramento Northern problem and the Standard Realty problem. It was the Sacramento Northern which led the Reorganization Committee to decide to bring this matter to the attention of the Court.

The Court: Q. That matter is not in the same

(Testimony of Robert E. Coulson.)

situation as suggested by Judge Sloss, is it? It is not a separate matter?

A. Your Honor, what I have in mind is this: The Sacramento Northern is treated under the plan as part of the Western Pacific system. Its earnings and deficits are in there. However, the Commission plan does not deal with its debt structure. So from the standpoint of consummating the reorganization we have a somewhat anomalous situation, that you revamp the debt structure of the Western Pacific Railroad Company, and the Sacramento Northern, which is an essential part of the system, but separately incorporated, is left with apparently \$800,000 of an unsecured debt in outside hands with no provision for its treatment under the plan, and there is a dispute between the Western Pacific Railroad Corporation and the Railroad Credit Corporation, as to which has the right in it. In some way it should be disposed of at the time of the consummation of the plan, if possible, and so we presented to the Court that issue, which is also brought before the Court in a separate petition, with a view to expediting a determination as to that outside claim against one essential link in the system.

Mr. Smith: Q. That is, as between the Western Pacific Rail- [114] road Company and the Railroad Credit Corporation, issues regarding the Sacramento Northern Railway Company indebtedness may be similar to those regarding the Standard Realty; nevertheless, our interests in getting a determination of those questions is much greater with the Sacramento Northern?

(Testimony of Robert E. Coulson.)

A. Right. That is all I meant by my first answer.

Mr. Smith: It is complicated by the further fact, your Honor, as I say, we think the statute of limitations has run. We do not know whether your Honor will direct the Trustees to plead the statute of limitations, or what your Honor will do about that. It is now in the management of the Trustees, and they are in the control of this Court.

Q. Those are the questions, Mr. Coulson, that Mr. Porter, of the Interstate Commerce Commission, says are questions which may properly be determined by the Court? A. Yes.

Mr. Smith: The next question, your Honor, that we are presenting relates to the status of the Tidewater Southern, with respect to certain provisions of the plan that discuss wholly-owned railroad subsidiaries, and your Honor has heard Mr. Elsey's expression of his view, that despite the fact that a fractional portion of the shares of the Tidewater Southern are still in outside hands, the Tidewater Southern is, to all intents and purposes, still a wholly-owned subsidiary.

Q. In the view of the Committee, Mr. Coulson, should that view of Mr. Elsey's be made effective?

A. Definitely. The Tidewater Southern is treated throughout the plan as a wholly-owned subsidiary, but falls just outside the definition.

Mr. Smith: In that connection, Mr. Porter says that the plan obviously is based upon the inclusion of such subsidiary railway corporations, and it was

(Testimony of Robert E. Coulson.)

by inadvertence only that the words "wholly [115] owned subsidiaries" were used instead of expressly providing in the plan for the inclusion of the Tidewater Southern. So we ask that that plan be corrected in that respect.

And then finally there is a very small question regarding the treatment of debits and credits as to adjust income in prior years. The plan states that, "Available net income shall be ascertained for each such calendar year as the account shall be stated on the books of the line company during said calendar year without adjustments except—" and this is the material matter—"debits or credits to adjust income in prior years shall be treated as income items for the year in which entered on the books, whether cleared through income or profit and loss accounts, so far, but only so far as such debits and credits reflect cash receipts or disbursements in the year in which they are entered on the books."

We ask that that item 3 be changed, so that it reads simply, "Debits or credits to adjust income in prior years shall be treated as income items for the year in which entered on the books, whether cleared through income or profit and loss account."

Q. In the opinion of the Committee would that furnish a more practicable method of accounting?

A. Yes, definitely, both as to tax aspects and general accounting aspects.

Mr. Smith: Q. And that is the question regarding which Mr. Porter says in his letter:

(Testimony of Robert E. Coulson.)

“Division 4 is of the further opinion that the limitation in the adjustment of income items in prior years as provided in clause 3 of the third paragraph of the subdivision L is impracticable and the modification proposed by the Committee represents a proper basis for the correction of the plan by the Court if it sees fit to adopt such proposal.”

That is the matter that we have just been discussing?

A. Yes. [116]

Mr. Smith: Are there any questions?

The Court: Do you wish to ask the witness any questions? Any of the counsel wish to ask the witness any questions? That is all, sir.

Anything further?

Mr. Smith: That is all that we have. I think Mr. Buckland has something he wanted to say, or maybe Judge Sloss wanted to express himself.

The Court: I mean, is there any further evidence that is to be presented?

Mr. Smith: No further evidence on our part. That is our case.

The Court: Any further evidence to be presented to the Court?

Mr. Sloss: My suggestion, your Honor, is, if it is agreeable to Mr. Buckland, that I might present the proposition very briefly that the disposition of the receipts on those claims that have been paid in part by the Standard Company should not be disposed of on the petition of the Reorganization Com-

mittee, but should be disposed of on the separate action. Now, of course, the two things, Mr. Bucklands motion to dismiss that independent action——

The Court: Is that action 23,307-S? Is that the action filed by Mr. Goodrich?

Mr. Sloss: That is the one, yes.

The Court: Filed on May 22nd.

Mr. Sloss: That is the one in which I do not appear for the Western Pacific. My appearance is limited to objecting to the Court's consideration of those issues on this petition of the Reorganization Trustees. The two things are closely involved. One has to come before the other, and I suggest if there is no [117] objection from your Honor or from Mr. Buckland, that I might proceed to state my position briefly.

The Court: Yes.

(Argument of counsel omitted.)

“Mr. Buckland: * * * ”

Therefore, if this court has full jurisdiction as a court of equity in the controversy which apparently exists between the Western Pacific Railroad Corporation and the Railroad Credit Corporation, what is the use of duplicating procedure by bringing a separate action involving the same parties and the same subject matter as is now before your Honor in Western Pacific? And it was for that reason that I told our friends that I would be very glad to accept service in order that this might be expedited, and may I say here we are all at one, I think, with your Honor desiring to expedite this as much as we can. I would accept service, but I reserve the right

to challenge the position of this petition in this court at this time. Under the rule I am given twenty days in which to answer the petition. I did not want twenty days to answer if the petition did not belong here, and therefore I, under the recent rules, or the new rules of the Federal Court, filed a motion in the alternative to dismiss the petition or for a summary judgment.

Now, I base both of those upon the fact that all of the issues of both law and fact which are or can be raised under this separate petition are here before your Honor, and that your Honor will take judicial notice of your own record. I take it that there is no question that your Honor does take judicial notice of your own record.

The Court: There is no question about that.

[118]

(Argument of counsel omitted.)

The Court: With the approval of counsel, I should like to have the reporter transcribe his notes of this hearing and argument. Is there any objection?

Mr. Smith: No objection, your Honor.

Mr. Buckland: I have here a temporary printed brief that I should be glad to give to counsel.

The Court: I was thinking you have had argument enough on it and it won't be necessary to file any briefs unless counsel feel there is something they wish to call the Court's attention to in addition to what has been said today. I understand the petition will be submitted and also the alternative

motion to dismiss, or for summary judgment in case No. 23,307-S is submitted.

Mr. Buckland: May I ask, your Honor, in case it should be necessary to file an answer in this last case, that I be given some time in which to file it?

The Court: Yes. Is that agreeable to everybody interested here? Judge Sloss?

Mr. Sloss: Yes, entirely. I think Mr. Goodrich has another suggestion to make.

Mr. Goodrich: Your Honor, I will make a motion to that effect, if you wish: If the Court concludes that it will take jurisdiction of this bill as an independent bill and not under section 77, and having heard the argument about it, Mr. Buckland was wondering if the Court might then enter judgment on the pleadings filed. I do not see the purpose in holding the court here another day to make another appearance and take the testimony when in fact all the evidence is before the Court.

The Court: If it is agreeable to you, Mr. Buckland, let it be submitted with that understanding.

[119]

Mr. Buckland: I can't see any particular reason——

The Court: It would save time, as suggested by counsel, by Mr. Goodrich, certainly, it would be useless to take up further time of the Court in presenting evidence when all the evidence is before the Court.

Mr. Buckland: I am not quite clear what Mr. Goodrich——

The Court: It would be as if the allegations of the complaint in No. 23,307-S were deemed denied and the case submitted on the evidence offered here today.

Mr. Buckland: I assume here——

Mr. Goodrich: Deny the allegations and submit the matter on the evidence.

The Court: Let it be submitted. I will first, however, pass upon your motion to dismiss and the alternative motion for summary judgment, and then if I should rule against you, it is understood the allegations of the complaint are denied, and I might then pass upon the matter upon its merits.

Mr. Buckland: What I was confused about was that my motion might be considered as an old-fashioned demurrer, and I wish to file an answer if necessary.

The Court: Very well. I will endeavor to give you a decision at an early date.

[Endorsed]: Filed Jun. 26, 1944. [120]

[Title of District Court and Cause.]

No. 26591-S

ORDER CONSTRUING PLAN OF REORGAN-
IZATION IN VARIOUS RESPECTS AND
R E C O N C I L I N G INCONSISTENCIES
THEREIN

The petition filed May 9, 1944, by Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, the Reorganization Committee designated to put into effect and carry out the plan of reorganization of

the debtor above named, for an order construing the plan of reorganization in various respects and reconciling inconsistencies therein came on duly to be heard and was heard June 2, 1944, and has been submitted.

The Court being fully advised in the premises finds [121] that notice of the hearing upon said petition has been given as prescribed by the order of this Court, dated May 9, 1944, and that all of the allegations and representations contained in the petition are true, except that (i) the amount owing by Standard Realty and Development Company to the debtor company for advances on open account is \$303,310.86, (ii) the amount owing by Sacramento Northern Railway to the debtor company for advances on open account is \$4,779,356.42, and (iii) the positions taken by The Railroad Credit Corporation in respect of the various matters referred to in the petition were not only those averred in the petition, but were and are also such as it took on the hearing on the petition as more fully appears from the record of the hearing on said petition. The Court further finds and concludes:

(a) That the inconsistency pointed out in paragraph 3 of the petition should be resolved in the manner proposed by the Reorganization Committee in paragraph 4 of the petition:

(b) That the provisions of subdivisions P and R of the plan of reorganization (quoted in paragraph 5 of the petition), which relate to the application of the proceeds of the distributive shares of the debtor and its subsidiaries under the marshaling and dis-

tributing plan of 1941, require a reduction in the number of shares of common stock allocated to The Railroad Credit Corporation under paragraph 4 of subdivision P by one share for each \$62 of such proceeds received by The Railroad Credit Corporation after December 31, 1938, and prior to the issuance of the new securities under the plan; [122]

(c) That no reduction should be made in the amounts or number of securities or stock allocated to The Railroad Credit Corporation under paragraph 4 of subdivision P of the plan of reorganization by reason of any payments received by The Railroad Credit Corporation after December 31, 1938, in respect of the claims against Standard Realty and Development Company and Sacramento Northern Railway (such claims being accommodation collateral pledged to and with The Railroad Credit Corporation by The Western Pacific Railroad Corporation by an instrument dated March 25, 1933);

(d) That The Railroad Credit Corporation is entitled to receive, in payment of its claim against the debtor, the securities and stock allocated to it under paragraph 4 of subdivision P of the plan of reorganization, except for the reduction in the number of shares of common stock referred to in paragraph (b) above.

(e) That the rights of The Railroad Credit Corporation under its pledge agreement dated March 25, 1933, with The Western Pacific Railroad Corporation will not be affected by the issuance of the new securities to The Railroad Credit Corporation;

and The Railroad Credit Corporation is entitled to proceed against the collateral so pledged to the extent that the actual value of such new securities shall not satisfy its claim;

(f) That the defect and inconsistency pointed out in paragraphs 19 and 20 of the petition should [123] be cured and reconciled in the manner proposed by petitioners in paragraph 20 of the petition; and

(g) That the defect pointed out in paragraph 21 of the petition should be cured in the manner proposed by petitioners in said paragraph.

Now, Therefore, it is hereby Ordered, Adjudged and Decreed:

(1) That paragraph 2 of subdivision P of the plan of reorganization be and hereby is construed as requiring (a) the issuance of 4.67 shares of new common stock (provided for in the plan) in payment of accrued and unpaid interest, to January 1, 1939, of \$266.66 $\frac{2}{3}$ on each \$1,000 principal amount of the debtor's outstanding First Mortgage bonds, and (b) an aggregate issue of 230,184.767 shares of such common stock in respect of the aggregate of accrued and unpaid interest, to January 1, 1939, upon all such bonds outstanding;

(2) That the Reorganization Committee make provision for the issuance of 4.67 shares of new common stock in payment of accrued and unpaid interest to January 1, 1939, of \$266.66 $\frac{2}{3}$ on each \$1,000 principal amount of the debtor's outstanding First Mortgage bonds;

(3) That the provisions of subdivisions P and R of the plan of reorganization, which relate to the application of the proceeds of the distributive shares of the debtor and its subsidiaries under the marshaling and distributing plan of 1931, be and are hereby construed as requiring a reduction in the number of shares of common stock allocated to The Railroad Credit Corporation under paragraph 4 of subdivision P of the plan by one share for each \$62 of such [124] proceeds received by the Railroad Credit Corporation after December 31, 1938, and prior to the issuance of the new securities under the plan;

(4) That except as provided in paragraph (3) of this order, no reduction be made in the amounts or number of securities or stock allocated to The Railroad Credit Corporation under paragraph 4 of subdivision P of the plan or reorganization;

(5) That The Railroad Credit Corporation is entitled to retain the claims against Standard Realty and Development Company and Sacramento Northern Railway pledged to and with The Railroad Credit Corporation by The Western Pacific Railroad Corporation by an instrument dated March 25, 1933, and to apply the proceeds thereof in satisfaction of its claim against the debtor;

(6) That the term "wholly owned railway subsidiaries" in the second paragraph of subdivision L of the plan of reorganization be interpreted to include as one of such subsidiaries of the debtor Tidewater Southern Railway Company, and to include any railway corporation, 95 per cent or more

of the stock of which shall be owned by the reorganized company after the consummation of the reorganization; and

(7) That the provisions of clause (3) of the third paragraph of subdivision I. of the plan of reorganization be and are hereby revised and reworded so that said clause will provide: [125]

“* * * (3) debits or credits to adjust income in prior years shall be treated as income items for the year in which entered on the books, whether cleared through income or profit and loss accounts.”

Dated: September 14, 1944.

A. F. St. SURE

District Judge

Approved as to form.

ARTHUR B. DUNNE

Attorney for The Railroad
Credit Corporation

LEROY R. GOODRICH

Attorney for The Western
Pacific Railroad Company

FELIX T. SMITH

Attorney for Reorganization
Committee

[Endorsed]: Filed Sep. 14, 1944. [126]

[Title of District Court and Cause.]

No. 26591-S

NOTICE OF APPEAL

The Railroad Credit Corporation, a corporation, a creditor of the above named Debtor, and a party respondent in respect of the matters presented by the Petition of Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, the members of the Reorganization Committee in the above [127] entitled matter, filed in the above entitled matter on May 9, 1944, and a party aggrieved by the Order of September 14, 1944, hereinafter referred to, hereby gives notice that it does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the portions of the Order of the above entitled Court made and filed in the above entitled matter on September 14, 1944, being the Order determining the matters presented by the said Petition of May 9, 1944, adverse to this respondent, The Railroad Credit Corporation, and in particular appeals from the portions of said Order next designated:

(a) The finding and the conclusion in the paragraph designated (b), and each and every part thereof, being the paragraph beginning with the words "That the provisions of subdivisions P and R of the plan of reorganization [quoted in Paragraph 5 of the Petition]" and ending with the words "and prior to the issuance of the new securities under the plan;"

(b) The ordering, adjudging and decreeing provisions of said order in the paragraph in said order

designated (3), being the paragraph beginning with the words "That the provisions of subdivisions P and R of the plan of reorganization, which relate to the application of the proceeds", and ending with the words "under the plan";

(c) So much of said Order as provides or indicates (if the Order does so provide or indicate) that any proceeds of any claim against Standard Realty and Development Company or Sacramento Northern Railway, referred to in the Order, reduce the claim of The Railroad Credit Corporation against the above named Debtor. [128]

Dated: October 13, 1944.

EDWARD G. BUCKLAND

WILLIAM J. KANE

ARTHUR B. DUNNE

Attorneys for Appellant The
Railroad Credit Corpora-
tion

Address: 333 Montgomery Street, San Francisco
4, California.

[Endorsed]: Filed Oct. 13, 1944. [129]

[Title of District Court and Cause.]

No. 26591-S

NOTICE OF APPEAL

Notice is hereby given that The Western Pacific Railroad Corporation, a party to the above-entitled action, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the Order Construing Plan of Reorganization In Various

Respects and Reconciling Inconsistencies Therein, made and entered on September 14, 1944, and particularly from Paragraph (5) of said Order and Decree, reading as follows:

“(5) That The Railroad Credit Corporation is entitled to retain the claims against Standard Realty and Development Company and Sacramento Northern Railway pledged to and with The Railroad Credit Corporation by an instrument dated March 25, 1933, and to apply the proceeds thereof in satisfaction of its claim against the debtor.”

Dated: This 13th day of October, 1944.

LEROY R. GOODRICH

Attorney for Appellant, The
Western Pacific Railroad
Corporation.

[Endorsed]: Filed Oct. 13, 1944. [130]

Premium Charged for this bond is \$10.00 per annum.

United States Fidelity and Guaranty Company
Baltimore—Maryland

No. \$250.00

District Court of the United States, for the North-
ern District of California, Southern Division

No. 26591-S

In the Matter of

THE WESTERN PACIFIC RAILROAD COM-
PANY,

Debtor.

COST BOND ON APPEAL

Know All Men by These Presents:

That We, The Western Pacific Railroad Corporation, as Principal, and United States Fidelity and Guaranty Company, a corporation, having its principal place of business in the City of Baltimore, State of Maryland, and having a paid up capital stock of not less than Ten Million Dollars, duly incorporated under the laws of the State of Maryland, and having complied with all the requirements of the laws of the State of California and the United States of America respecting corporations, for the purpose of making, guaranteeing and becoming surety on bonds and undertakings, are held and firmly bound unto The Railroad Credit Corporation in the sum of Two Hundred Fifty and 00/100 (\$250.00) Dollars, lawful money of the United States, to be paid to it, its respective

executors, administrators and successors, of which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this 13th day of October, 1944.

Whereas the Principal, The Western Pacific Railroad Corporation has prosecuted an appeal to the U. S. Circuit Court of Appeals, Ninth Circuit.

Now, therefore, the condition of this obligation is such that if the above named Principal shall prosecute its said appeal to effect and answer all costs, if it fails to make good its plea, then this obligation shall be void, otherwise to remain in full force and effect.

The undersigned Surety agrees that in case of any breach of any condition hereof, the Court may, upon no less than ten (10) days notice to the undersigned, proceed summarily to ascertain the amount which the undersigned, as Surety, is bound to pay on account of such breach and render judgment against it and award execution therefor not to exceed the sum specified in this Undertaking.

THE WESTERN PACIFIC
RAILROAD CORPORATION

By LEROY R. GOODRICH

Principal

UNITED STATES FIDELITY
AND GUARANTY COM-
PANY

By MILDRED DROST

Attorney-in-fact

State of California,
County of Alameda—ss.

On this 13th day of October in the year of our Lord One Thousand Nine Hundred and forty-four before me, J. C. Laney a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Mildred Drost, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the United States Fidelity and Guaranty Company, and acknowledged to me that she subscribed the name of the United States Fidelity and Guaranty Company, thereto as principal, and her own name as Attorney-in-fact.

In Witness Whereof, I have hereunto set my hand and affixed my official Seal, at my office in the County and State aforesaid, the day and year in this certificate first above written.

(Attorney-in-fact)

[Seal] J. C. LANEY

Notary Public in and for said County of Alameda,
State of California. [131]

[Title of District Court and Cause.]

No. 26591-S

ORDER PERMITTING FILING OF UNDER-
TAKING FOR COSTS ON APPEAL

Good Cause Appearing Therefor, and The Railroad Credit Corporation, a corporation, having on October 13, 1944 filed its Notice of Appeal, from a

portion of the Order herein of September 14, 1944, and having presented to the above entitled Court the Undertaking for Costs on Appeal of the Hartford Accident and [132] Indemnity Company, a corporation duly authorized to transact a general surety business in the State of California, the above entitled Court hereby permits the filing of the Undertaking for Costs on Appeal of the said surety company.

October 14, 1944.

A. F. ST. SURE

United States District Judge

[Endorsed]: Filed Oct. 14, 1944. [133]

Fidelity and Surety Department
Hartford Accident and Indemnity Company
Hartford, Connecticut

In the District Court of the United States for the
Northern District of California, Southern Division

No. 26,591—S

In the Matter of:

THE WESTERN PACIFIC RAILROAD COMPANY,

Debtor.

UNDERTAKING FOR COST ON APPEAL

Whereas, The Railroad Credit Corporation, a corporation, a creditor of the debtor above-named,

has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a certain order rendered against the said creditor in said action in the above entitled court and in favor of other parties in interest in the matter of the reorganization of The Western Pacific Railroad Company, a corporation, debtor, in pursuance of the bankruptcy act, and entered herein on September 14, 1944.

Now, Therefore, in consideration of the premises and of such appeal, the undersigned Hartford Accident and Indemnity Company, a corporation organized and existing under the laws of the State of Connecticut and duly authorized to transact a general surety business in the State of California, does hereby undertake and promise on the part of The Railroad Credit Corporation, a corporation, the Appellant, that said Appellant will pay all damages and costs which may be awarded against them on the appeal, or on a dismissal thereof, not exceeding Two Hundred Fifty and no/100 (\$250.00) Dollars, to which amount it acknowledges itself bound.

It is further stipulated as a part of the foregoing bond that in case of the breach of any condition thereof, the above-named District Court, may upon ten (10) days' notice to the surety above-named, proceed summarily in said proceedings to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment therefor against said surety and award execu-

tion therefor, not exceeding, however, the said sum of Two Hundred Fifty and No/100 Dollars (\$250.00).

In Witness Whereof, the said Surety has caused these presents to be executed and its official seal attached by its duly authorized Attorney-in-Fact at San Francisco, California, the 13 day of October, A. D. 1944.

The premium on this bond is \$10.00 per annum.

HARTFORD ACCIDENT AND
INDEMNITY COMPANY

(Seal) By R. A. VAN HORN
Attorney-in-Fact

[Endorsed]: Filed Oct. 14, 1944. [134]

[Title of District Court and Cause.]

No. 26591-S

THE RAILROAD CREDIT CORPORATION'S
DESIGNATION OF RECORD ON APPEAL

On October 13, 1944, The Railroad Credit Corporation appealed to the United States Circuit Court of Appeals for the Ninth Circuit from certain portions of the Order of the above entitled Court made and filed in the above entitled matter on September 14, 1944, being the Order determining the matters [135] presented by the Petition of Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, members of the Reorganization Committee in the above entitled matter, which said

Petition was filed herein on May 9, 1944. Reference is made to the Notice of Appeal of The Railroad Credit Corporation filed in the above entitled matter on October 13, 1944. The Railroad Credit Corporation hereby designates the portions of the records, proceedings and evidence to be contained in the record on its said appeal as follows:

1. All file marks and endorsements upon all papers documents and other matter hereinafter designated.

2. Petition of The Western Pacific Railroad Company, Debtor, filed herein on August 2, 1935 in pursuance of subdivision (a) of Section 77 of the Bankruptcy Act as amended.

3. Order of the above-entitled court approving said petition filed August 2, 1935.

4. Petition for order respecting filing of claims and division of creditors and stockholders into classes filed August 20, 1935.

5. Order dividing claims into classes filed August 20, 1935.

6. Petition for appointment of trustees and order respecting notice of hearing of said petition, filed August 31, 1935.

7. Order appointing trustees, filed September 23, 1935.

8. Order of September 30, 1935, modifying order appointing trustees and opinion and order of the above-entitled court of November 9, 1935 confirming appointment of trustees.

9. Proposed Plan of Reorganization filed by the Debtor February 8, 1936, being Exhibit "1" of

Exhibits introduced at [136] hearings before the Interstate Commerce Commission.

10. Proposed report of the Bureau of Finance of the Interstate Commerce Commission dated August 2, 1937, in the Matter of The Western Pacific Railroad Company Reorganization, Interstate Commerce Commission, Finance Docket No. 10913; the proposed report is endorsed filed August 6, 1937.

11. Report and order of the Interstate Commerce Commission in said matter, Finance Docket No. 10913, dated October 10, 1938. Order of the Interstate Commerce Commission in said Finance Docket No. 10913, dated December 30, 1938 and granting a rehearing.

12. Report and order of the Interstate Commerce Commission in said matter, Finance Docket No. 10913, dated June 21, 1939.

12a. So much of the proceedings on the hearings before the Interstate Commerce Commission as is necessary to show the introduction in evidence on said hearing of the paper designated No. 9 above. A transcript of the proceedings in the above-entitled court sufficient to show that the transcript of the proceedings before and by the Interstate Commerce Commission was filed in the above-entitled court, and that all of the proceedings before and by the Interstate Commerce Commission were made part of the record of the above-entitled matter in the above entitled court. Or in lieu of the foregoing, a statement that the paper designated No. 9 above was introduced upon the hearing before the Interstate Commerce Commis-

sion and that a transcript of the proceedings before and by the Interstate Commerce Commission was filed in the above-entitled court, and made a part of its records herein.

13. Order of the Interstate Commerce Commission in [137] said matter, Finance Docket No. 10913, of September 19, 1939, denying petition for rehearing and modification.

14. Order of the above-entitled court made November 8, 1939, fixing the time within which objections to the Plan of Reorganization and claims for equitable treatment might be filed.

15. Stipulation as to facts not in dispute filed herein on December 20, 1939 and order of the above-entitled court made and filed herein on December 20, 1939, making said stipulation a part of the record.

16. So much of the testimony of Charles Elsey given on the hearing of the above-entitled matter in the above-entitled court on January 22, 1940 as shows the introduction in evidence on said hearing of said stipulation, paper No. 15 designated above, together with the memorandum of corrections thereto, or a statement that said stipulation and memorandum of corrections was introduced in evidence on said hearing, and the said memorandum of corrections.

17. Order of the above-entitled court fixing January 22, 1940 as the date for hearing the parties in interest in respect of Plan of Reorganization of the above-named debtor, providing for notice, etc., filed herein December 21, 1939.

18. Opinion of the above-entitled court dated and filed August 15, 1940, upon approval of the Plan of Reorganization of the above-named debtor.

19. Order of the above-entitled court overruling all objections and approving Plan of Reorganization of the above named debtor, filed August 15, 1940.

20. Notice of entry of order of the above-entitled court overruling objections and approving Plan of Reorganization and [138] affidavit of service of said notice, filed August 22, 1940.

21. Claim of The Railroad Credit Corporation filed herein September 12, 1935, together with all attached exhibits.

22. Mandate of the Supreme Court of the United States to the above-entitled court upon the affirming of the order, judgment and decree of the above-entitled court of August 15, 1940 (No. 19 designated above) and filed and spread upon the minutes of the above-entitled court May 13, 1943 (318 U. S. 448).

23. Petition of Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, members of the Reorganization Committee in the above-entitled matter, for construction of the Plan of Reorganization herein and other relief, filed herein on May 9, 1944.

24. Order fixing time and place for hearing of the petition (designated No. 23 above), notice of hearing, etc., and proof of service of the foregoing.

25. Transcript of proceedings on hearing of said

petition (No. 23 designated above), being the proceedings of Friday, June 2, 1944 (two copies furnished herewith), showing appearances and all proceedings excepting only argument of counsel.

26. Appearance herein of Arthur B. Dunne as attorney for The Railroad Credit Corporation, filed herein June 5, 1944.

27. Corrected memorandum opinion and order of the above-entitled court, construing Plan of Reorganization, made and filed herein June 21, 1944.

28. Order of the above-entitled court construing Plan of Reorganization in various respects and reconciling inconsistencies herein, made and filed herein on September 14, 1944. [139]

29. Notice of entry of said order of September 14, 1944 designated No. 28 above and Clerk's certificate of giving of such notice, or other proof of service.

30. Notice of appeal of The Railroad Credit Corporation, a corporation, from portions of the said order of September 14, 1944, paper designated No. 28 above.

31. Undertaking for costs on appeal made by Hartford Accident and Indemnity Company on behalf of The Railroad Credit Corporation, and filed herein on October 14, 1944, and given on said day by The Railroad Credit Corporation in connection with its said appeal from said order of September 14, 1944, together with the order of the above-entitled court permitting filing of said undertaking for costs on appeal by The Railroad Credit Corporation which said order was made and filed on October 14, 1944.

32. A copy of this designation.

33. A copy of the statement of points on which appellant The Railroad Credit Corporation intends to rely, filed herein with this designation.

34. Various appeals were taken from the order and decree of the above-entitled court of August 15, 1940, approving the Plan of Reorganization and overruling objections to said Plan (No. 19 designated above). In connection with said appeals, there was gotten up and duly certified a transcript of record which said transcript of record was filed in the Circuit Court of Appeals for the Ninth Circuit in the matter entitled and numbered in said court as follows:

In the United States Circuit Court of Appeals
Ninth Circuit [140]

No. 9714

In the Matter of the
WESTERN PACIFIC RAILROAD COMPANY,
a corporation,

Debtor.

WESTERN PACIFIC RAILROAD CORPORATION,
a corporation, et al.,

Appellants,

v.

INSTITUTIONAL BONDHOLDERS COMMITTEE,
et al.,

Appellees.

Said record on appeal in said matter No. 9714

in the United States Circuit Court of Appeals for the Ninth Circuit contains, duly certified, all of the foregoing matters numbered in this designation numbers 1 to 20, both inclusive, together with further matters bearing upon the issues raised upon said appeal and the papers by which said appeal was taken and perfected. All of said other matters contained in said transcript of record are to be deemed designated by this designation and hereby are designated in the event the said United States Circuit Court of Appeals for the Ninth Circuit shall make the order to be applied for by appellant The Railroad Credit Corporation and next hereinafter referred to.

It is the intention of The Railroad Credit Corporation, in connection with its said appeal herein referred to and the record hereby designated, to petition the Circuit Court of Appeals for the Ninth Circuit for an order substantially as follows: That there be omitted from the transcript of record prepared in pursuance of this designation the matters heretofore certified to the said Circuit Court of Appeals for the Ninth Circuit in the said matter No. 9714 in said Circuit Court of Appeals and the matters numbers 1 through 20, both inclusive [141] above, and that in lieu thereof, in the transcript of record hereby designated, a copy of said order of said Circuit Court of Appeals may be included, and that all matters and things heretofore certified to said Circuit Court of Appeals in said matter No. 9714 may be deemed a part of the

record on appeal hereby designated and even though not herein specifically designated may be referred to by any of the parties and that if the parties desire that such matters be exhibited to the court they may, if they so elect, reproduce them, or some of them, in whole or in part, in the briefs of the parties or in appendices to such briefs.

If said United States Circuit Court of Appeals for the Ninth Circuit shall make an order as last hereinabove referred to and a copy of said order is filed in the above-entitled court in the above-entitled matter, then, such order is hereby designated for inclusion in the transcript of record hereby designated in lieu of the matters numbered 1 to 20, both inclusive, in this designation and in lieu of all other matters heretofore certified to said Circuit Court of Appeals and included in the transcript of record in the matter No. 9714 in said Circuit Court of Appeals.

Dated: November 15th, 1944.

EDWARD G. BUCKLAND

WILLIAM J. KANE

ARTHUR B. DUNNE

Attorneys for The Railroad
Credit Corporation.

[Endorsed]: Filed Nov. 16, 1944. [142]

[Title of District Court and Cause.]

No. 26591-S

STATEMENT OF POINTS ON WHICH AP-
PELLANT THE RAILROAD CREDIT
CORPORATION INTENDS TO RELY

The Railroad Credit Corporation having appealed from the portions of the order of the above-entitled Court of September 14, 1944, adverse to it (being the Order construing the Plan of Reorganization and determining the matters [143] presented by the Petition of May 9, 1944, of Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, members of the Reorganization Committee in the above-entitled matter) all as more particularly appears from the Notice of Appeal of The Railroad Credit Corporation filed herein on October 13, 1944, now states the points on which it intends to rely on said appeal, as follows:

1. The said Order and Decree of September 14, 1944, in the portions appealed from by The Railroad Credit Corporation (particularly (b) of the Findings and Conclusions) is in error in construing the Plan of Reorganization of the above-named debtor (and particularly subdivisions P and R of said Plan of Reorganization) as requiring a reduction in the number of shares of common stock allocated to The Railroad Credit Corporation under paragraph 4 of subdivision P by one share for each \$62 of the proceeds of the distributable shares of the debtor and its subsidiaries under the Marshalling and Distributing Plan of 1931 [erroneously referred to as the Plan of 1941] received by The

Railroad Credit Corporation after December 31, 1938 and prior to the issuance of the new securities under said Plan.

2. The court erred and the said Order and Decree of September 14, 1944 is in error in the portions appealed from by The Railroad Credit Corporation (particularly in paragraph (3) of the ordering, adjudging and decreeing provisions) in construing subdivisions P and R of the Plan of Reorganization of the above-named debtor and in construing them as requiring a reduction in the number of shares of common stock allocated to The Railroad Credit Corporation under paragraph 4 of subdivision P of the said Plan by one share for each \$62 of proceeds of the [144] distributive shares of the said debtor and its subsidiaries under the Marshalling and Distributing Plan of 1931, received by The Railroad Credit Corporation after December 31, 1938, and prior to the issuance of the new securities under the said plan.

The provisions of subdivision R of the said Plan of Reorganization provide that to the extent to which The Railroad Credit Corporation receives any distributive shares of the Debtor or its subsidiaries under the Marshalling and Distributing Plan of 1931, prior to the issuance of the new securities under the Plan, the proceeds shall be applied in reduction of the claim of The Railroad Credit Corporation and in this respect provides in part that such proceeds "shall be applied in reduction of the claim of the Railroad Credit Corporation in respect of which such new securities are to be

issued at the rates provided in subdivision P * * *.” The words “in respect of which such new securities are to be issued at the rates provided in subdivision P * * *” are merely descriptive of the claim referred to and were inserted solely for the purpose of identifying the claim referred to and are not directive in character and do not direct a reduction in the new securities to be received by The Railroad Credit Corporation by reason of the receipt by The Railroad Credit Corporation of any distributive shares of the debtor or any of its subsidiaries under the Marshalling and Distributing Plan of 1931.

3. The Railroad Credit Corporation is entitled to receive and retain the securities allotted to it under paragraph 4 of subdivision P of the Plan of Reorganization of the above-named debtor, unless the market value of the new securities issued to The Railroad Credit Corporation under said Plan at the time of delivery of the same to The Railroad Credit Corporation plus the proceeds [145] realized by The Railroad Credit Corporation from collateral securities held by it other than general and refunding mortgage bonds, exceeds the face amount of the claim of The Railroad Credit Corporation together with accrued interest thereon and to the extent that the market value of said new securities at the time of delivery thereof to The Railroad Credit Corporation, and the collateral security held by The Railroad Credit Corporation other than general and refunding mortgage bonds, falls below the face of the claim of The Railroad

Credit Corporation against the above-named debtor, together with accrued interest thereon.

4. Unless and until the market value of the new securities allotted to The Railroad Credit Corporation under said plan of reorganization of the above-named debtor, shall, at the date of delivery thereof to The Railroad Credit Corporation, equal or exceed the amount of the said claim of The Railroad Credit Corporation, plus interest, The Railroad Credit Corporation may continue to apply in further partial payment of its said claim the proceeds of collateral security held by it, other than general and refunding mortgage bonds, and the proceeds of the pledged distributive shares of the said debtor and its subsidiary under the Marshalling and Distributing Plan of 1931.

5. The new securities allotted to The Railroad Credit Corporation under the said Plan of Reorganization of the above-named debtor were not allotted to The Railroad Credit Corporation upon the basis of its claim against the said debtor, had no relation whatsoever to the amount of said claim and were not allotted because of, or on the basis of or in relation to any security held by The Railroad Credit Corporation, securing its said claim, except general and refunding mortgage bonds, [146] and no new securities were allocated to The Railroad Credit Corporation, under the said Plan of Reorganization, on account of or because of or in relation to its lien on the pledged distributive share of the said debtor and its subsidiary under the

Marshalling and Distributing Plan of 1931, but the securities allotted to The Railroad Credit Corporation under the said Plan of Reorganization of the above-named debtor were allotted solely upon the basis of, on account of, and in relation to the general and refunding mortgage bonds held by The Railroad Credit Corporation as collateral security for its claim (principal and interest) against the above-named debtor.

6. The new securities allocated to The Railroad Credit Corporation under the said Plan of Reorganization of the above-named debtor and to be issued to and received by The Railroad Credit Corporation, operate to affect the claim of The Railroad Credit Corporation (principal and interest) only as between The Railroad Credit Corporation and the above-named debtor and to provide to the above-named debtor (but to no one else) a defense to said claim and operate only to make said claim unenforceable only as between The Railroad Credit Corporation and the above-named debtor, without in any way affecting the rights of The Railroad Credit Corporation, by reason of its said claim, as to other persons and as to collateral security, excepting only general and refunding mortgage bonds held by The Railroad Credit Corporation as collateral security and directed to be surrendered. The said allocation and issuance and receipt of said new securities under said Plan of Reorganization does not satisfy and discharge the claim (principal or interest) of The Railroad Credit Corporation aforesaid and said claim can be dis-

charged and will be discharged and satisfied only by the receipt by The Railroad Credit Corporation of money or [147] money's worth (in fact and as measured by market value) to the full extent of said claim of The Railroad Credit Corporation. The issuance of said new securities to The Railroad Credit Corporation will provide the above-named debtor with a defense to the said claim of The Railroad Credit Corporation, not by reason of the fact that the said claim will be thereby satisfied and discharged, but only because of the provisions of the Federal Bankruptcy Act and particularly §77 thereof. The said claim itself will still remain unsatisfied, except as the same is satisfied to the extent of the market value of the new securities received by The Railroad Credit Corporation, said market value to be taken at the time of receipt thereof, and to the extent that The Railroad Credit Corporation realizes on security held by it and not required to be surrendered. The security held by The Railroad Credit Corporation, not required to be surrendered by it, that is, security other than general and refunding mortgage bonds, and the market value of the said new securities, does not and will not be as much as the amount of the claim of The Railroad Credit Corporation against the above-named debtor and interest. There is no provision in the said Plan of Reorganization in conflict with any of the foregoing propositions.

7. The said Plan of Reorganization does not contemplate or direct the surrender by The Railroad Credit Corporation of any collateral excepting only

collateral as against which new securities are allotted to The Railroad Credit Corporation under said Plan and new securities are allotted to The Railroad Credit Corporation only against general and refunding mortgage bonds held by The Railroad Credit Corporation as collateral. The new securities allotted to The Railroad Credit Corporation [148] under said Plan represent only the equitable equivalent of the collateral to be surrendered by The Railroad Credit Corporation, that is to say, the general and refunding mortgage bonds held by The Railroad Credit Corporation as collateral security.

8. The said Plan of Reorganization properly construed means and was intended to mean what has heretofore been stated in paragraphs 3 and following of the foregoing statement of points.

EDWARD G. BUCKLAND

WILLIAM J. KANE

ARTHUR B. DUNNE

Attorneys for The Railroad
Credit Corporation.

(Affidavit of service by mail attached.)

[Endorsed]: Filed Nov. 16, 1944. [149]

[Title of District Court and Cause.]

No. 26591-S

THE WESTERN PACIFIC RAILROAD CORPORATION'S DESIGNATION OF RECORD ON APPEAL

On October 13, 1944, The Western Pacific Railroad Corporation appealed to the United States Circuit Court of Appeals for the Ninth Circuit from certain portions of the Order of the above entitled Court made and filed in the above entitled matter on September 14, 1944, being the Order determining the matters presented by the Petition of Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, members of the Reorganization Committee in the above entitled matter, which said Petition was filed herein [153] on May 9, 1944. Reference is made to the Notice of Appeal of The Western Pacific Railroad Corporation filed in the above entitled matter on October 13, 1944. The Western Pacific Railroad Corporation hereby designates the portions of the records, proceedings and evidence to be contained in the record on its appeal as follows:

1. All of items 1 to 25, both inclusive, and each of such items, as the same are set forth in the Designation of Record on Appeal filed in the above entitled matter by The Railroad Credit Corporation, each of which items the Western Pacific Railroad Corporation incorporates by reference herein.

2. All of items 27 to 29, both inclusive, and all of item 34, and each of said items, as the same are set forth in the Designation of Record on Appeal filed in the above entitled matter by The Railroad

Credit Corporation, each of which items The Western Pacific Railroad Corporation incorporates by reference herein.

3. Notice of Appeal of The Western Pacific Railroad Corporation, a corporation, from portions of the said order of September 14, 1944, which said Notice of Appeal was filed October 13, 1944.

4. Bond for costs on appeal, made by United States Fidelity and Guaranty Company on behalf of The Western Pacific Railroad Corporation, and filed herein on October 13, 1944 by The Western Pacific Railroad Corporation in connection with its said appeal.

5. A copy of this designation.

6. A copy of the statement of points on which appellant The Western Pacific Railroad Corporation intends to rely, filed herein and with this designation.

7. It is the intention of The Western Pacific Railroad Corporation to join with The Railroad Credit Corporation in the [154] petition to the Circuit Court of Appeals for an order substantially as set forth in Item 34 of the Designation of Record filed by The Railroad Credit Corporation, and adopted and incorporated herein by reference, under Item 2 of this designation.

If said United States Circuit Court of Appeals shall make such order and a copy of said order is filed in the above entitled court in the above entitled matter, then such order is hereby designated for inclusion in the transcript of record hereby designated.

Dated: This 15th day of November, 1944.

LEROY R. GOODRICH

Attorney for The Western
Pacific Railroad Corp.

[Endorsed]: Filed Nov. 18, 1944. [155]

[Title of District Court and Cause.]

No. 26591-S

STATEMENT OF POINTS UPON WHICH AP-
PELLANT, THE WESTERN PACIFIC
RAILROAD CORPORATION, WILL RELY

The Western Pacific Railroad Corporation, which has heretofore appealed to the United States Circuit Court of Appeals for the Ninth Circuit from certain portions of the Order of the above mentioned court, made September 14, 1944, Construing Plan of Reorganization in Various Respects and Reconciling Inconsistencies Therein, hereby makes the following statement of points upon which it will rely upon its appeal: [156]

1. That the District Court erred in that portion of the Order of September 14, 1944 appealed from by The Western Pacific Railroad Corporation (particularly paragraph (c) of the Findings and Conclusions upon which said Order is based) in holding that the rights of The Railroad Credit Corporation under its pledge agreement with The Western Pacific Railroad Corporation will not be affected by the issuance of the new securities to The Railroad Credit Corporation.

2. That the District Court erred in that portion

of its Order of September 14, 1944 appealed from by The Western Pacific Railroad Corporation (particularly paragraph (e) of the Findings and Conclusions upon which said Order is based) in holding that The Railroad Credit Corporation is entitled to proceed against the collateral pledged, under its pledge agreement with The Western Pacific Railroad Corporation dated March 25, 1933, to the extent that the actual or market value of the new securities to be issued to The Railroad Credit Corporation shall not satisfy its claim.

3. That the District Court erred in said Order of September 14, 1944, appealed from by The Western Pacific Railroad Corporation (and particularly in paragraph (5) of said Order) in adjudging and decreeing that The Railroad Credit Corporation is entitled to retain the claims against Standard Realty and Development Company and Sacramento Northern Railway pledged to and with The Railroad Credit Corporation by The Western Pacific Railroad Corporation by an instrument dated March 5, 1933, and to apply the proceeds thereof in satisfaction of its claim against the debtor.

4. That no provision was made in the Plan of Reorganization as certified by the Interstate Commerce Commission and as affirmed by the Supreme Court of the United States, affecting the collateral assigned on March 5, 1933 by The Western Pacific Railroad Corporation. The claims against The Standard Realty and Development Company, and Sacramento Northern Railway were the [157] property of The Western Pacific Railroad Corporation.

They were not loaned to the debtor, The Western Pacific Railroad Company. They at no time constituted any part of the assets of the debtor. It was not within the jurisdiction of the Interstate Commerce Commission to provide for the disposition of the said claims, as between The Railroad Credit Corporation and The Western Pacific Railroad Corporation, upon final consummation of the Plan. The Commission specifically declined to make any such provision. The position it took was confirmed by the judgment of the Supreme Court.

The District Court was in error, in taking jurisdiction of this question, under the Petition of the Reorganization Committee, filed May 9, 1944, and in dismissing the action brought independently by The Western Pacific Railroad Corporation, in a bill numbered 23307-S in said District Court.

5. The District Court erred in its interpretation of the Plan of Reorganization of the debtor company, as such interpretation appears in its Order of September 14, 1944 in that the Court assumes that the value of the new securities to be issued under said Plan is to be measured, not by the values fixed thereon by the Commission, but by the market values of such securities, and that such securities, when issued to the various creditors entitled thereto under the provisions of the Plan, are not to be accepted by said creditors, including The Railroad Credit Corporation, in satisfaction of their claims, and at the values fixed by the Commission on said securities. The Plan provides no other basis of value, upon which such securities are to be issued

or taken. The adoption of market values as distinguished from the values fixed by the Commission would destroy the fairness and validity of the allocation of such securities to all the classes of creditors entitled to receive them, as such allocation was made by the Plan, and affirmed by the Supreme Court.

LEROY R. GOODRICH

Attorney for The Western
Pacific Railroad Corp.

(Affidavit of Service by Mail Attached.)

[Endorsed]: Filed Nov. 18, 1944. [158]

In the United States Circuit Court of Appeals,
Ninth Circuit

No.

In the Matter of an Application for an order to shorten the record on appeals from an order and degree of the United States District Court for the Northern District of California, Southern Division, made and entered on September 14, 1944, in that certain matter in reorganization under the provisions of Section 77 of the Bankruptcy Act entitled and numbered in said United States District Court, "In the Matter of The Western Pacific Railroad Company, Debtor," No. 26591-S.

ORDER PERMITTING SHORTENING OF
RECORD ON APPEAL

1. The following facts have been made to appear to the court by the verified petition of The Railroad

Credit Corporation, a corporation, and The Western Pacific Railroad Corporation, a corporation, Appellants, from the order and decree of September 14, 1944 hereinafter referred to:

On September 14, 1944 the United States District Court for the Northern District of California; Southern Division made and filed an order and decree in that certain matter in reorganization under the provisions of Section 77 of the Bankruptcy Act, pending in said court and entitled and numbered in said court, "In the Matter of The Western Pacific Railroad Company, Debtor," No. 26591-S. The Railroad Credit [163] Corporation and The Western Pacific Railroad Corporation have filed in said United States District Court notices of appeal from portions of said order and decree of September 14, 1944 and in connection with their said appeals have filed in said United States District Court and made their respective designations of record on appeal. In and by said designations there have been designated for inclusion in the transcript of record on appeal from said order and decree of September 14, 1944 certain matters heretofore certified to this court and filed in the records of this court, in a certain matter on appeal to this court entitled and numbered on the files of this court, "In the Matter of The Western Pacific Railroad Company, Debtor, Western Pacific Railroad Corporation, a corporation, et al., Appellants, v. Institutional Bondholders Committee, et al., Appellees," No. 9714 and particularly the items specifically designated 2 to 20, both inclusive in "The Railroad Credit Corporation's Designation

of Record on Appeal” and generally designated in item 34 of “The Railroad Credit Corporation’s Designation of Record on Appeal.”

2. And now, on consideration of the foregoing matters and good cause appearing therefor, it is Ordered:

(a) In preparing the transcript of record on the appeals of The Railroad Credit Corporation and The Western Pacific Railroad Corporation from the order and decree of the said United States District Court made and filed in the said matter No. 26591-S in said court on September 14, 1944, there [164] shall be eliminated items 2 to 20, both inclusive, specified in “The Railroad Credit Corporation’s Designation of Record on Appeal” and in lieu thereof the same items heretofore certified to this court and included in the transcript of record on appeal in this court in the said matter No. 9714 in this court shall be deemed part of the transcript of record on said appeals from said order and decree of September 14, 1944.

(b) In addition, there shall further be eliminated from the transcript of record on the said appeals from said order and decree of September 14, 1944 all other matter heretofore certified to this court and filed in this court in the said matter in this court No. 9714, but all of said matter heretofore included in the transcript of record on appeal in said matter No. 9714 shall be deemed a part of the transcript of record on the said appeals from said order and decree of September 14, 1944.

(c) The Railroad Credit Corporation and The Western Pacific Railroad Corporation shall file in the United States District Court for the Northern District of California, Southern Division in the said matter No. 26591-S in said court a certified copy of this order and the clerk of said United States District Court in preparing and certifying the transcript of record on said appeals from said order and decree of September 14, 1944 shall include in said transcript of record a copy of this order and when so included, the copy of this order shall stand in the place and stead of the matter directed by parts 2(a) and 2(b) [165] of this order to be eliminated from said transcript on appeal.

(d) Upon the said appeals of The Railroad Credit Corporation and The Western Pacific Railroad Corporation any of the parties may refer to any matter heretofore certified to and filed with this court in the transcript of record on appeal in said matter No. 9714 in this court, or, if they deem it desirable, may reproduce any of said matter in their briefs or appendices to their briefs, as matter included in the transcript on appeal on said appeals from said order of September 14, 1944 in the same manner and with the same effect as though the matters contained in the transcript of record on appeal in said matter No. 9714 in this court were physically contained in and were physically a part of the transcript of record on said appeals from said order and decree of September 14, 1944.

Dated : Nov. 21, 1944.

FRANCIS A. GARRECHT

United States Circuit Judge.

[Endorsed]: Filed Nov. 21, 1944. [166]

In the District Court of the United States for the
Northern District of California, Southern
Division

No. 26,591-S

In the Matter of

THE WESTERN PACIFIC RAILROAD
COMPANY,

Debtor.

ORDER EXTENDING TIME WITHIN WHICH
TO FILE RECORD ON APPEAL AND TO
DOCKET ACTION IN CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

On September 14, 1944, this Court made and entered in the above entitled action its Order Construing the Plan of Reorganization in Various Respects and Reconciling Inconsistencies therein. The Railroad Credit Corporation, a party to [167] the above entitled action, on October 13, 1944, filed its Notice of Appeal from certain portions of the above Order. From this Order The Western Pacific Railroad Corporation also filed a Notice of Appeal on October 13, 1944. Due to the extensiveness of the Matters to be contained in the Transcript of Record on Appeal it is desired that additional time be granted

by this Court for the filing of the Record on Appeal and for the docketing of the action.

Good Cause Appearing Therefor, It Is Hereby Ordered that appellant The Railroad Credit Corporation may have to and including December 26, 1944, within which to file the Record on Appeal and to docket the action in the Circuit Court of Appeals for the Ninth Circuit.

And It Is Further Ordered that the Clerk of the District Court shall include a copy of this Order in the Record on Appeal in the above entitled matter.

Dated: November 22, 1944.

A. F. ST. SURE,

United States District Judge.

[Endorsed]: Filed Nov. 22, 1944. [168]

[Title of District Court and Cause.]

No. 26591-S

ORDER EXTENDING TIME WITHIN WHICH
THE WESTERN PACIFIC RAILROAD
CORPORATION MAY FILE RECORD ON
APPEAL AND TO DOCKET ACTION IN
CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT

On September 14, 1944, this Court made and entered in the above entitled action its Order Construing the Plan of Reorganization in Various Respects and Reconciling Inconsistencies [169] Therein. The Western Pacific Railroad Corpora-

tion, a party to the above entitled action, on October 13, 1944, filed its Notice of Appeal from certain portions of the above Order. From this Order The Railroad Credit Corporation also filed a Notice of Appeal on October 13, 1944. Due to the extensiveness of the matters to be contained in the Transcript of Record on Appeal it is desired that additional time be granted by this Court for the filing of the Record on Appeal and for the docketing of the action.

Good Cause Appearing Therefor, It Is Hereby Ordered that appellant The Western Pacific Railroad Corporation may have to and including December 26, 1944, within which to file the Record on Appeal and to docket the action in the Circuit Court of Appeals for the Ninth Circuit.

And It Is Further Ordered that the Clerk of the District Court shall include a copy of this Order in the Record on Appeal in the above entitled matter.

Dated: November 22, 1944.

A. F. ST. SURE,

United States District Judge.

[Endorsed]: Filed Nov. 22, 1944. [170]

In the District Court of the United States, for the
Northern District of California, Southern
Division

No. 26,591-S

In the Matter of

THE WESTERN PACIFIC RAILROAD
COMPANY,

Debtor.

CERTIFIED COPY OF STIPULATION FILED
IN THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT, AND ORDER ON SAID STIPU-
LATION, IN RESPECT OF RECORD ON
APPEAL [171]

In the United States Circuit Court of Appeals,
Ninth Circuit

In the matter of certain appeals in the following
actions now pending in the United States Dis-
trict Court for the Northern District of Cali-
fornia, Southern Division: "In the Matter of
The Western Pacific Railroad Company,
debtor," Action No. 26591-S, and "The West-
ern Pacific Railroad Corporation v. The Rail-
road Credit Corporation," Action No. 23307-S

STIPULATION FOR AN ORDER TO
SHORTEN THE RECORDS ON APPEAL
AND TO CONSOLIDATE APPEALS FOR
BRIEFING, FOR ORAL ARGUMENT
AND FOR USE OF THE RECORD

I.

There is now pending in the United States Dis-

trict Court for the Northern District of California, Southern Division, an action #26591-S, entitled, "In the matter of The Western Pacific Railroad Company, debtor", a proceeding for reorganization of said railroad company under Section #77 of the Federal Bankruptcy Act. In said action The Railroad Credit Corporation and The Western Pacific Railroad Corporation appeared as creditors of the debtor. On May 9, 1944 the Reorganization Committee filed a petition asking the District Court to construe the Plan of Reorganization of the debtor. A hearing upon said petition was had on June 2, 1944 in the District Court.

On September 14, 1944 the District Court made an order in said proceeding, construing the Plan of Reorganization then before said court.

From said Order of the District Court, The Railroad Credit Corporation and The Western Pacific Railroad Corporation have filed separate appeals. Each of said appellants has filed [172] its designation of record on said appeals.

II.

There is now pending in the said District Court an action #23307-S, entitled, "The Western Pacific Railroad Corporation, plaintiff, vs. The Railroad Credit Corporation, defendant." By stipulation of plaintiff and defendant the hearing of said action, and of a motion by defendant for dismissal thereof, was heard by the District Court on June 2, 1944, and in the same proceeding and upon the same showing, evidence and record, except as to plead-

ings as the hearing of the aforesaid Petition of the Reorganization Committee in action #26591-S. On June 19, 1944 the District Court made an order dismissing said action #23307-S. On August 7, 1944 said District Court filed a judgment therein for defendant.

From this order and from said judgment, The Western Pacific Railroad Corporation has appealed and has filed its designation of record on appeal.

III.

It is the desire of both parties to avoid unnecessary duplication of the record in these several appeals, to save expense and labor and the time of the court, in the printing and reading of briefs and in the hearing of oral argument in connection therewith.

It Is Therefore Hereby Stipulated by The Railroad Credit Corporation and by The Western Pacific Railroad Corporation that an Order be made by the Circuit Court of Appeals for the Ninth Circuit, as follows:

(a) That the appeals separately filed by The Railroad Credit Corporation and The Western Pacific Railroad Corporation, on October 13, 1944, in the proceeding entitled "In the Matter of The Western Pacific Railroad Company, debtor." #26591-S, and the [173] appeal filed by The Western Pacific Railroad Corporation on September 18, 1944 in the proceeding entitled, "The Western Pacific Railroad Corporation, plaintiff, vs. The Railroad Credit Corporation, defendant," #23307-S be

consolidated for briefing and for oral argument, and may be heard upon the same record.

(b) That since the action entitled "The Western Pacific Railroad Corporation vs. The Railroad Credit Corporation," #23307-S, was determined upon the same evidence and record, except as to pleadings, and in the same hearing, as the Reorganization matter, action #26591-S, there need not be repeated and included in the transcript of record on appeal by The Western Pacific Railroad Corporation in said plenary action #23307-S any item or part of the record on appeal which may be included in the records on appeal in action #26591-S.

(c) That the transcript of proceedings in the District Court on June 2, 1944, and other matters of record set forth and designated in the record on appeal in either of said actions, may be used or referred to by either The Railroad Credit Corporation or The Western Pacific Railroad Corporation in their briefs, or appendices thereto, or reproduced therein, as matter included in the transcript on appeal in respect to each of the appeals hereby consolidated.

(d) That The Railroad Credit Corporation and The Western Pacific Railroad Corporation shall file a certified copy of this stipulation and of said order in the United States District Court for the Northern District of California, Southern Division, in the said matter #26591-S, and in the said matter #23307-S, and that the Clerk of said District Court shall include in the transcript of record in each of

said actions a copy of this order, in preparing and certifying the same.

Dated: November 27, 1944.

THE RAILROAD CREDIT
CORPORATION

By ARTHUR B. DUNNE

Its Attorney

THE WESTERN PACIFIC
RAILROAD CORPORATION

By LEROY R. GOODRICH

Its Attorney [174]

ORDER TO CONSOLIDATE APPEALS AND
TO SHORTEN RECORD

The foregoing Stipulation having been read and approved, and

Good cause appearing therefor,

It Is so Ordered.

CURTIS D. WILBUR

United States Circuit Judge

A True Copy.

[Endorsed]: Filed Nov. 28, 1944. Paul P.
O'Brien, Clerk.

[Endorsed]: Filed Nov. 29, 1944. [175]

[Title of District Court and Cause.]

No. 26591-S

ORDER EXTENDING TIME WITHIN WHICH
THE RAILROAD CREDIT CORPORATION
AND THE WESTERN PACIFIC RAIL-
ROAD CORPORATION MAY FILE REC-
ORD ON APPEAL AND TO DOCKET AC-
TION IN THE CIRCUIT COURT OF AP-
PEALS FOR THE NINTH CIRCUIT.

On October 13, 1944, The Railroad Credit Corporation and The Western Pacific Railroad Corporation, parties to the above entitled action, filed notices of appeal from certain portions of [176] the Order Construing the Plan of Reorganization in Various Respects in Reconciling Inconsistencies Therein, made and entered by this Court in the above entitled action on September 14, 1944. This Court did on November 22, 1944 grant an extension of thirty-four (34) days to and including December 26, 1944, for the filing of the record on appeal and for the docketing of the action by the above named appellants. Due to the extensiveness of the matters to be contained in the transcript, the Clerk of the District Court is unable to prepare the transcript of the record on appeal within the additional allotted time, and it is desired that an additional time of sixteen (16) days to and including January 11, 1945 be granted by this Court in accordance with Rule 73(g) of the Federal Rules of Civil Procedure for the filing of the record on appeal and for the docketing of the action in the Circuit Court.

Good Cause Appearing Therefor, It is Hereby Ordered that the appellants, The Railroad Credit Corporation and The Western Pacific Railroad Corporation, may have to and including January 11, 1945 within which to file the record on appeal and to docket said action in the Circuit Court of Appeals, Ninth Circuit.

It Is Further Ordered that the Clerk of the District Court shall include a copy of this Order in the Record on Appeal in the above entitled matter.

Dated: December 21, 1944.

A. F. ST. SURE

United States District Judge

[Endorsed]: Filed Dec. 21, 1944.

[Title of District Court and Cause.]

No. 26591-S

AMENDMENT AND SUPPLEMENT TO DESIGNATION OF RECORD ON APPEAL OF THE RAILROAD CREDIT CORPORATION

The Railroad Credit Corporation's Designation of Record on Appeal, filed herein on November 16, 1944, is amended and supplemented as follows:

Also include in the record on appeal the affidavit

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of Helen Small filed herein on November 16, 1944, and showing service by mail of the Statement of Points and the Designation of Record on Appeal

of The Railroad Credit Corporation; and copy of this Amendment and Supplement to Designation.

Attached to said affidavit were copies of said Statement of Points and said Designation of Record on Appeal. This need not be repeated, but there may be substituted for it the following statement:

Attached to the original of the foregoing Affidavit of Service by Mail as the same was filed were copies of the Statement of Points and Designation of Record referred to in said Affidavit, which are not herein repeated because they appear elsewhere in this Transcript.

Dated: January 4, 1945.

EDWARD G. BUCKLAND

WILLIAM J. KANE

ARTHUR B. DUNNE

Attorneys for The Railroad
Credit Corporation.

[Endorsed]: Filed Jan. 4, 1945.

[Title of District Court and Cause.]

No. 26591-S

AMENDMENT AND SUPPLEMENT TO DESIGNATION OF RECORD ON APPEAL OF THE WESTERN PACIFIC RAILROAD CORPORATION

The Western Pacific Railroad Corporation's Designation of Record on Appeal, filed herein on November 18, 1944, is amended and supplemented as follows:

Also include in the record on appeal the affidavit of T. O. Laine filed herein on November 20, 1944 showing service by mail of the Statement of Points and the Designation of Record on Appeal of The Western Pacific Railroad Corporation. Attached to said affidavit were copies of said Statement of Points and said [180] Designation of Record on Appeal. These copies need not be repeated, but there may be substituted therefor the following statement:

"Attached to the original of the foregoing affidavit of service by mail, as the same was filed, were copies of the Statement of Points and Designation of Record referred to in said affidavit which are not herein repeated because they appear elsewhere in this Transcript."

Also include in the record on appeal a copy of this Amendment and Supplement to Designation.

Dated: This 5th day of January, 1945.

LEROY R. GOODRICH

Attorney for The Western Pa-
cific Railroad Corporation.

[Endorsed]: Filed Jan. 6 1945. [181]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 181 pages, numbered from 1 to 181, inclusive, contain a full, true, and correct transcript of the records and proceedings in the matter of The Western Pacific Railroad Company, Debtor, No. 26591-S, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Twenty-seven & 75/100 Dollars and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 9th day of January A. D. 1945.

[Seal]

C. W. CALBREATH

Clerk

E. H. NORMAN

Deputy Clerk [182]

[Endorsed]: No. 10962 United States Circuit Court of Appeals for the Ninth Circuit. The Railroad Credit Corporation, a corporation, Appellant, vs. Frederick H. Ecker, Frank C. Wright and Robert E. Coulson, the members of the Reorganization Committee, of the Western Pacific Railroad Co., Debtor, Appellees, and The Western Pacific Railroad Corporation, a corporation, Appellant vs. The Railroad Credit Corporation, a corporation, Appellee. Transcript of Record. Upon Appeals from the District Court of the United States for the Northern District of California Southern Division.

Filed January 10, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals in
and for the Ninth Circuit

No. 16962

In The Matter of

THE WESTERN PACIFIC RAILROAD COM-
PANY,

Debtor.

TWO APPEALS:

THE RAILROAD CREDIT CORPORATION, a
corporation,

Appellant,

vs.

FREDERICK H. ECKER, et al., etc.,

Appellees.

THE WESTERN PACIFIC RAILROAD COR-
PORATION, a corporation,

Appellant,

vs.

THE RAILROAD CREDIT CORPORATION, a
corporation,

Appellee.

STATEMENT OF POINTS ON WHICH THE
RAILROAD CREDIT CORPORATION IN-
TENDS TO RELY, AND DESIGNATION
OF PORTIONS OF RECORD TO BE RE-

LIED UPON AND APPLICATION FOR
ORDER IN RESPECT OF PRINTING
RECORD.

The Railroad Credit Corporation having on October 13, 1944 appealed from certain portions of the Order of the District Court of the United States, Northern District, Southern Division, made and filed on September 14, 1944, in the matter entitled and numbered in said court "In the Matter of The Western Pacific Railroad Company, Debtor," Bankruptcy No. 26591, (being the Order Construing the Plan of Reorganization in Various Respects and Reconciling Inconsistencies Therein) did on the 15th day of November, 1944, serve upon all adverse parties by mail a true and correct copy of the "Statement of Points on Which Appellant, The Railroad Credit Corporation Intends to Rely", and a true and correct copy of "The Railroad Credit Corporation's Designation of Record on Appeal", the originals of which papers were filed in the District Court on the 16th day of November, 1944, together with an "Affidavit of Service by Mail", copies of which documents are included in the original certified record on appeal in the above entitled matter and which appear therein at the following pages:

Statement of Points on Which Appellant, The Railroad Credit Corporation Intends to Rely—Page 143—Original Certified Record.

The Railroad Credit Corporation's Designation of Record on Appeal—Page 135—Original Certified Record.

Affidavit of Service by Mail—Page 150—Original Certified Record.

The Railroad Credit Corporation hereby states that on this appeal it intends to rely on those points set out and designated in the above "Statement of Points on Which Appellant, The Railroad Credit Corporation Intends to Rely."

The Railroad Credit Corporation further states that those documents designated in the above "The Railroad Credit Corporation's Designation of Record on Appeal" are necessary for the consideration by the court on this appeal.

Certain of the documents so designated were heretofore certified to the above entitled court in that certain matter in the above entitled court entitled and numbered in said court "In the Matter of The Western Pacific Railroad Company, Debtor,—Western Pacific Railroad Corporation, a corporation, et al, Appellants, vs. Institutional Bondholders Committee et al, Appellees," No. 9714. Heretofore and on November 21, 1944, the above entitled court, on the application of appellants in this matter, The Railroad Credit Corporation and The Western Pacific Railroad Corporation, made and filed its Order, in connection with the present appeals, authorizing the elimination from the original certified record on these appeals of all matters heretofore certified to this court and contained in the records of this court in the said matter in this court No. 9714, upon the inclusion in the original certified record

on these appeals of a copy of said order of this court of November 21, 1944, contained in the original certified record on these appeals at page 163 thereof, and, accordingly, matters contained in the record in the said matter in this court No 9714 have been eliminated from the original certified record on these appeals, and appellant, The Railroad Credit Corporation, prays that the said matters so included in the original certified record on these appeals by reference, but physically excluded in pursuance of said order of November 21, 1944 and contained in the record in the said matter in this court numbered 9714 be not printed, and that this court make its order accordingly, and that in said order this court grant leave to the parties to make reference, or reproduce in their briefs, parts of the matter contained in the record in this court in the said matter in this court numbered 9714 in the same way and with the same effect as though the said matters were printed as part of the record on these appeals.

Dated: January 10, 1945.

EDWARD G. BUCKLAND

WILLIAM J. KANE

ARTHUR B. DUNNE

Attorneys for The Railroad
Credit Corporation

[Endorsed]: Filed, Jan. 10, 1945. Paul P.
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

No. 10962

ORDER IN RESPECT OF PRINTING OF
RECORD

Good Cause Appearing Therefor, It Is Ordered that in printing the record on appeals in the above entitled matter it shall be necessary to print only the matter physically contained in the original certified record as certified to this court by the Clerk of the United States District Court for the Northern District of California, Southern Division, and it shall not be necessary to print any matter therein contained by reference by reason of the order of this court of November 21, 1944, a copy of which appears in said original certified copy of record, and

It Is Further Ordered that on this appeal any of the parties may refer to or reproduce in their brief or as appendices thereto any matter appearing in the record on appeal in this court in the matter in this court numbered 9714, and by reference incorporated in the record on these appeals.

Dated: January 10, 1945.

FRANCIS A. GARRECHT

United States Circuit Judge

[Endorsed]: Filed Jan. 11, 1945. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

No. 10962

STATEMENT OF POINTS ON WHICH THE
WESTERN PACIFIC RAILROAD CORPO-
RATION INTENDS TO RELY, AND DES-
IGNATION OF PORTIONS OF RECORD
TO BE RELIED UPON

The Western Pacific Railroad Corporation having on October 13, 1944 appealed from certain portions of the Order of the District Court of the United States, Northern District, Southern Division, made and filed on September 14, 1944, in the matter entitled and numbered in said court "In the Matter of The Western Pacific Railroad Company, Debtor," Bankruptcy No. 26591, (being the Order Construing the Plan of Reorganization in Various Respects and Reconciling Inconsistencies Therein) did on the 18th day of November, 1944, serve upon all adverse parties by mail a true and correct copy of the "Statement of Points on Which Appellant, The Western Pacific Railroad Corporation Intends to Rely", and a true and correct copy of "The Western Pacific Railroad Corporation's Designation of Record on Appeal", the originals of which papers were filed in the District Court on the 18th day of November, 1944, and were followed by an "Affidavit of Service by Mail", filed on the 20th day of November, 1944, copies of which documents are included in the original certified record on appeal in the above entitled matter and which appear therein at the following pages:

Statement of Points on Which Appellant, The Western Pacific Railroad Corporation Intends to Rely—Page 158—Original Certified Record.

The Western Pacific Railroad Corporation's Designation of Record on Appeal—Page 153—Original Certified Record.

Affidavit of Service by Mail—Page 159—Original Certified Record.

The Western Pacific Railroad Corporation hereby states that on this appeal it intends to rely on those points set out and designated in the above "Statement of Points on Which Appellant, The Western Pacific Railroad Corporation Intends to Rely".

The Western Pacific Railroad Corporation further states that those documents designated in the above "The Western Pacific Railroad Corporation's Designation of Record on Appeal" are necessary for the consideration by the court on this appeal.

Dated: This 12th day of January, 1945.

LEROY R. GOODRICH

Attorney for The Western
Pacific Railroad Corpora-
tion.

[Endorsed]: Filed Jan. 12, 1945. Paul P.
O'Brien, Clerk.